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ARTEC GROUP, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

ARTEC GROUP, INC., a California Corporation,

Plaintiff,

VS.

ANDREY KLIMOV, an individual; YULIA KLIMOVA, an individual; ANNA STEBLEVA, an individual; A-STAR LLC, a Russian company; ID-WISE SIA, a Latvian company; and AXON BUSINESS SYSTEMS, LLC, a United Arab Emirates company,

Defendants.

Case No. 5:15-CV-03449-RMW

[Assigned for all purposes to the Hon.
Ronald M. Whyte]

FIRST AMENDED COMPLAINT FOR DAMAGES FOR

- 1. Violation of Uniform Trade Secrets Act (Civil Code §§ 3426, et seq.);**
- 2. Breach of Employment Contract;**
- 3. Breach of Confidentiality Agreement;**
- 4. Breach of Distributor Agreement;**
- 5. Unjust Enrichment;**
- 6. Breach of Implied Covenant of Good Faith and Fair Dealing (Individuals);**
- 7. Breach of Implied Covenant of Good Faith and Fair Dealing (Axon);**
- 8. Tortious Interference with Contract;**
- 9. Conversion;**
- 10. Fraudulent Concealment;**
- 11. Breach of Fiduciary Duty;**
- 12. Breach of Duty of Loyalty (Labor Code §§ 2860, 2863);**
- 13. Civil Conspiracy;**
- 14. Constructive Trust;**
- 15. False Advertising (Business & Professions Code § 17500);**

) **16. Unfair Competition (Bus. & Profs.**
) **Code §§ 17200, et seq.); and**
) **17. Violation of Cal. Penal Code § 502**

) **JURY TRIAL DEMANDED**

) Complaint filed July 27, 2015
)

Plaintiff ARTEC GROUP, INC. for its complaint against Defendants ANDREY KLIMOV, an individual; YULIA KLIMOVA, an individual; ANNA STEBLEVA, an individual; A-STAR LLC, a Russian Limited Liability Company; ID-WISE SIA, a Latvian company; and AXON BUSINESS SYSTEMS, LLC, a United Arab Emirates Limited Liability Company, states as follows:

I. PARTIES.

A. Plaintiff Artec Group, Inc.

1. Plaintiff Artec Group, Inc. (“ARTEC” or “ARTEC CALIFORNIA”) is an active California corporation founded in 2006 with its principal place of business in Palo Alto, California. ARTEC was the first-founded of the “Artec Group of Companies,” three affiliated corporations located in the United States, Luxembourg, and Russia. The Artec Group of Companies (collectively referred to as the “ARTEC GROUP”) specializes in the design, manufacture, and sale of proprietary facial recognition devices, 3D scanners, technology, systems, and components thereof, including software (the “DEVICES”), to domestic and international governmental and corporate clients. In 2014, ARTEC GROUP’s industry-leading software was selected to perform a 3D scan on President Barack Obama, whose likeness was then “printed out” via 3D printer and exhibited in the Smithsonian Museum.¹

2. As relevant to this lawsuit, over several years, including in 2014 and early 2015 (and continuing), ARTEC GROUP had developed prototypes for two next-generation devices.

¹ See “President Obama in 3D,” available at www.artec3d.com/news/President+Obama+in+3D_29953 (last retrieved July 16, 2015).

1 The first is an access control or “intercom” system whereby an individual’s facial profile is
2 matched with an existing database. Individuals who are “recognized” by the scanning
3 software are granted access to a secured location, while non-recognized individuals must
4 undergo secondary screening or are denied access. The second is a wireless 3D scanner,
5 which would be easier to use and more flexible than the pre-existing scanners that required
6 “wired” connections to a computer terminal.

7 3. The software, source code, drawings, and specifications of these prototypes
8 were closely guarded trade secrets of ARTEC GROUP that were in the possession of ARTEC.
9 As alleged herein, those trade secrets were secretly misappropriated by disgruntled then-CEO
10 Andrey Klimov in collaboration with a group of rogue employees, who are now actively and
11 unabashedly competing against ARTEC under the guise of ID-Wise SIA, A-Star, LLC and
12 other shell corporations, relying on the very trade secrets that ARTEC paid them to protect and
13 develop.

14 4. ARTEC has standing to pursue these claims because at all relevant times it
15 lawfully possessed the trade secrets at issue and is the party from whom the Defendants
16 misappropriated the trade secrets, as follows:

17 a. ARTEC, individually and in concert with the subsequently
18 incorporated ARTEC GROUP affiliates, developed the trade secrets.

19 b. Until April 2014, ARTEC was the sole owner of ARTEC GROUP
20 intellectual property and trade secrets. Pursuant to a technology and software licensing
21 agreement of February 1, 2011, ARTEC provided ARTEC Europe, S.a.r.l., with a
22 nonexclusive license to certain technology, including trade secrets, related to 3D scanning
23 and 3D face recognition. Under the February 1st agreement, ARTEC Europe was
24 authorized to use, manufacture, improve upon, and enhance the ARTEC GROUP Devices,
25 and sell such devices worldwide, except in the United States.

26 c. In April 2014, ARTEC assigned its patents and related know-how,
27 technology and proprietary information to Artec Europe.
28

d. On March 1, 2015, ARTEC Europe, S.a.r.l. provided ARTEC with a nonexclusive license to certain technology, including trade secrets, related to 3D scanning and 3D face recognition. Under the March 1st agreement, ARTEC was authorized to use, manufacture, improve upon, and enhance the ARTEC GROUP Devices, and sell such devices in the United States and elsewhere.

B. Individual Defendants.

5. ARTEC is informed and believes, and on that basis alleges, that Defendant Andrey Klimov (“KLIMOV”) is a citizen of Russia who was residing in Luxembourg when this lawsuit was filed and is now residing in Russia. KLIMOV is a former Director and Chief Executive Officer of ARTEC, as well as a 29.5% shareholder in the Company. KLIMOV was at all times a trusted agent of ARTEC by virtue of his executive position, and received valuable consideration from ARTEC in exchange for the discharge of his duties. He was removed from his position as Director and Chief Executive Officer of ARTEC on February 12, 2015 immediately after ARTEC discovered that he and other ARTEC trusted agents and employees had conspired to misappropriate, and had misappropriated, ARTEC’s Trade Secrets² and Confidential Information for the purpose of competing directly against ARTEC in the market of 3D facial recognition technology and to develop their own intercom system dependent on ARTEC’s proprietary prototypes.

6. Based on official sources, KLIMOV is the founder and sole shareholder of A-STAR,³ as well as its General Director. Also based on official sources, KLIMOV is the

² As used herein, the term “Trade Secrets” has the same meaning as stated in Civil Code section 3426.1(d). The term “Confidential Information” has the same meaning as set forth in Section 1.1 of ARTEC’s Noncompetition, Confidentiality, Inventions Agreement (“NCIA”) with each of its employees (see footnote 14, *infra*), except that with respect to allegations against AXON, the term “Confidential Information” has the meaning stated in Section 1.1 the Non-Exclusive Distribution Agreement between ARTEC and AXON (see footnote 15, *infra*).

³ When the underlying Complaint was filed, KLIMOV was listed as the 51% shareholder of A-STAR according to official Russian sources, with the other 49% belonging to other former ARTEC and AGC officers and employees. For example, Defendants KLIMOVA and STEBLEVA were 2% and 5% shareholders in A-STAR, respectively. However, according to a recent extract from Russia’s Unified State Register

1 sole Board Member and shareholder of ID-WISE. Both A-STAR and ID-WISE were
2 formed while KLIMOV was an employee, officer, and director at ARTEC. As alleged
3 herein, both A-STAR and ID-WISE were formed as vehicles through which KLIMOV and
4 other DEFENDANTS could, and actually did, unlawfully compete against ARTEC.⁴

5 7. ARTEC is informed and believes, and on that basis alleges, that Defendant
6 Yulia Klimova (“KLIMOVA”), is a citizen of Russia was residing in Luxembourg when
7 this lawsuit was filed and is now residing in Russia. KLIMOV and KLIMOVA are
8 husband and wife. KLIMOVA was employed by ARTEC, including as the de facto Chief
9 Financial Officer and Legal and Financial Consultant, from approximately April 1, 2009
10 until her relationship with ARTEC was terminated on or about February 12, 2015 due to
11 her participation in the unlawful conspiracy alleged herein. KLIMOVA was a trusted
12 agent of ARTEC, exemplified by her communications with ARTEC’s California IP
13 counsel and financial advisors, her authority to review legal billing, her oversight of
14 corporate compliance, and her ensuring that employee agreements were executed. She
15 received valuable consideration from ARTEC in exchange for the discharge of her duties.
16 On information and belief, KLIMOVA is and has at all relevant times been an employee or
17 agent of A-STAR and ID-WISE, and in fact was listed as a co-founder and shareholder of
18 A-STAR while serving as an employee and trusted agent of ARTEC. On information and
19 belief, KLIMOVA oversees and manages the finances and contractual relationships
20 (including employment or service relationships involving ARTEC’s former employees) of
21 ID-WISE and A-STAR.

22
23 of Legal Entities, KLIMOV is now the sole shareholder of A-Star as well as its lone
24 “incorporator” and director. ARTEC alleges that A-STAR is KLIMOV’s alter ego, and
vice versa.

25 ⁴ KLIMOV is also the sole shareholder and general director of another shell
26 corporation, Sense Technology LLC (former “Artec 3D,” a Russian entity that KLIMOV
27 secretly founded apparently to deceive ARTEC’s distributors and suppliers into thinking it
28 was an ARTEC GROUP company) through which he is engaged in sales of EnterFace 3D
devices. ARTEC is informed and believes that KLIMOVA and STEBLEVA are both
involved in the sale of unlawful EnterFace 3D devices on behalf of Sense Technology as
well as ID-WISE.

1 8. ARTEC is informed and believes, and on that basis alleges, that Defendant
2 Anna Stebleva (“STEBLEVA”) is a citizen of Russia who was residing in Luxembourg
3 when this lawsuit was filed and currently has residences both in Russia and in
4 Luxembourg. STEBLEVA was employed by ARTEC, including as a Vice President of
5 Business Development and Marketing Specialist, starting from approximately April 1,
6 2009 until her relationship with ARTEC was terminated on or about February 12, 2015
7 due to her participation in the unlawful conspiracy alleged herein. STEBLEVA was a
8 trusted agent of ARTEC, exemplified by her ability to enter into contracts and vendor and
9 distributor relationships on behalf of ARTEC. She received valuable consideration from
10 ARTEC in exchange for the discharge of her duties. On information and belief,
11 STEBLEVA is and has at all relevant times been an employee or agent of A-STAR and
12 ID-WISE, and in fact was listed as a co-founder and shareholder of A-STAR while serving
13 as an employee and trusted agent of ARTEC.

14 9. KLIMOV, KLIMOVA, and STEBLEVA are collectively referred to herein as
15 the “INDIVIDUAL DEFENDANTS.”

16 **C. Corporate Defendants.**

17 10. ARTEC is informed and believes, and on that basis alleges, that Defendant
18 A-Star LLC (“A-STAR”) is a Russian limited liability company with its principal place of
19 business in Moscow, Russia. A-STAR’s founding documents state that it was incorporated
20 on December 22, 2014, while the INDIVIDUAL DEFENDANTS were all actively
21 employed by ARTEC and its trusted agents. Each of the INDIVIDUAL DEFENDANTS
22 was initially listed as a shareholder and founder, with KLIMOV a majority shareholder
23 (51%). However, based on an extract from Russia’s Unified State Register of Legal
24 Entities dated January 5, 2016, KLIMOV is now the sole shareholder of A-STAR, as well
25 as its General Director and sole incorporator.

26 11. As alleged herein, A-STAR competed directly against ARTEC, relying on
27 misappropriated ARTEC GROUP Trade Secrets and/or Confidential Information, during
28 the time in which KLIMOV and other shareholders were actively employed by ARTEC,

1 including by entering into a secret agreement with AXON, a longstanding ARTEC
2 distributor, for the sale of 112 of ARTEC's Broadway 3D devices for \$819,273 (below
3 ARTEC's set wholesale prices). The revenues for this sale were not given to ARTEC nor
4 did A-STAR compensate ARTEC for the devices that it unlawfully stole or replicated.

5 12. On information and belief, A-STAR is the alter ego of KLIMOV, and vice
6 versa, as alleged *infra* in paragraphs 40 to 41.

7 13. ARTEC is informed and believes, and on that basis alleges, that Defendant
8 ID-Wise SIA ("ID-WISE") is a Latvian company incorporated on January 22, 2015 with
9 its principal place of business in Latvia.

10 14. According to official sources, KLIMOV is ID-WISE's sole Board Member
11 and its lone shareholder, as well as its General Director.⁵

12 15. On information and belief, ID-WISE unlawfully competed directly against
13 ARTEC, relying on misappropriated ARTEC GROUP Trade Secrets and/or Confidential
14 Information in the lawful possession of ARTEC, during the time in which KLIMOV was
15 ARTEC's employee, director, and CEO. ID-WISE continues to unlawfully compete
16 against ARTEC, including through its Thor3D Scanner and EnterFace 3D product lines
17 that rely on ARTEC's trade secrets.

18 16. Each of the INDIVIDUAL DEFENDANTS acted as ID-WISE's employees
19 or agents while they were working for ARTEC and acting as its trusted agents.

20 17. ID-WISE has marketed, advertised for sale and, on information and belief,
21 actually sold multiple devices that incorporate or rely upon ARTEC's trade secrets. It has
22 actively promoted its unlawful products to ARTEC's United States and California
23 distributors, demonstrating its intent to compete against ARTEC locally.

24 18. On information and belief, ID-WISE is the alter ego of KLIMOV, and vice
25 versa, as alleged *infra* in paragraphs 50 to 51.

26 _____
27 ⁵ However in a subsequent correspondence from ID-WISE's counsel on June 15,
28 2015, it was represented that KLIMOV, as well as KLIMOVA and STEBLEVA are "co-
founders and shareholders" of ID-WISE.

1 19. ARTEC is informed and believes, and on that basis alleges, that Defendant
2 Axon Business Systems LLC (“AXON”) is a United Arab Emirates limited liability
3 company with its principal place of business in Dubai, UAE. On information and belief,
4 AXON conducts business worldwide, including in the United States.

5 20. As relevant to this Complaint, on August 8, 2012, ARTEC and AXON
6 entered into a “Non-Exclusive Distribution Agreement,” through which AXON agreed to
7 be the distributor of ARTEC’s devices in the UAE, and also agreed *inter alia* that as a
8 continuing obligation it would protect ARTEC GROUP Trade Secrets and Confidential
9 Information, would not sell ARTEC GROUP Devices without ARTEC’s authorization,
10 and would report any suspected acts of infringement to ARTEC. In breach of this
11 agreement, AXON entered into at least one agreement with A-STAR whereby it purchased
12 112 of ARTEC’s Broadway 3D devices for \$819,273 (below ARTEC’s set wholesale
13 prices). AXON has continued to collaborate with AXON and ID-WISE even after being
14 informed that these companies and other companies associated with the INDIVIDUAL
15 DEFENDANTS are unlawfully selling ARTEC Devices and/or devices built based on
16 misappropriated ARTEC Trade Secrets and/or Confidential Information. On information
17 and belief, AXON has profited from these transactions, to ARTEC’s detriment.

18 21. Collectively, A-STAR, ID-WISE, and AXON are referred to as the
19 CORPORATE DEFENDANTS.

20 22. In doing the acts herein alleged, unless otherwise stated, each of the
21 defendants, including those fictitiously-named, acted as the alter ego, agent, representative
22 or co-conspirator of each of the others, and in so doing, was acting within the course and
23 scope of such agency, representation or conspiracy. Alternatively, each of the defendants is
24 vicariously liable for the other defendants’ misconduct herein alleged by ratification and
25 acceptance of benefits from same.

26 **II. SUBJECT MATTER JURISDICTION AND VENUE**

27 23. This Court has subject matter jurisdiction over this action pursuant to 28
28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$75,000,

1 exclusive of interest and costs, and is between a citizen of the State of California and
2 citizens or subjects of a foreign state who are lawfully admitted for permanent residence in
3 the United States and citizens of and/or domiciled in foreign countries.

4 24. Venue is proper in the Northern District pursuant to 28 U.S.C. § 1391(b)
5 because a substantial part of the events or omissions giving rise to ARTEC's claim
6 occurred in the district.

7 25. Intradistrict Assignment: Pursuant to Civil L.R. 3-2(c) and 3-2(e), the
8 assignment of this action to the San Jose Division is proper because a substantial part of
9 the events or omissions which give rise to the claim occurred in Santa Clara County.
10 Moreover, pursuant to 27 U.S.C. § 1391(b)(3), there is no other United States district court
11 where this case could potentially be brought.

12 **III. PERSONAL JURISDICTION**

13 26. The DEFENDANTS, and each of them, have on multiple occasions availed
14 themselves of the benefits, protections, and privileges of California law to such an extent
15 that it is proper for them to be summoned into California court.

16 **A. Jurisdiction Over the Individual Defendants.**

17 27. KLIMOV, KLIMOVA, and STEBLEVA (the "INDIVIDUAL
18 DEFENDANTS") are subject to the jurisdiction of this Court because their employment
19 efforts were centered in California. For purposes of ARTEC's contract claims, each of the
20 INDIVIDUAL DEFENDANTS' employment included, for example, giving direction of
21 California employees, negotiating contracts on behalf of ARTEC, and interacting with
22 counsel and accountants regarding California tax and legal issues. Furthermore, their
23 employment and non-disclosure contracts specify application of California law.

24 28. For purposes of PLAINTIFF's tort claims, each of the INDIVIDUAL
25 DEFENDANTS acted with the intent to perform an actual, physical act in the real world;
26 including misappropriating trade secrets and other intentional torts, as alleged herein. The
27 INDIVIDUAL DEFENDANTS also allegedly violated the terms of the contracts they
28 entered into with PLAINTIFF. In addition, the tortious conduct occurred while the three

1 individual defendants held themselves out as officers and trusted agents of PLAINTIFF.

2 For example:

- 3 • KLIMOV's Employment Agreement listed him as "CEO," he held
4 publicly held himself out as "Chief Financial Officer" in
5 correspondence, and even counsel for DEFENDANTS has referred to
6 KLIMOV in correspondence as "Director and CEO."
- 7 • KLIMOV had the power to hire and fire PLAINTIFF's employees, and
8 in fact exercised that power.
- 9 • KLIMOV signed financial statements on behalf of Artec California in
10 his capacity as CEO.
- 11 • KLIMOV executed a Licensing Agreement between ARTEC and Artec
12 Europe.
- 13 • KLIMOV signed an offer letter to Yukhin as "CEO."
- 14 • KLIMOVA affirmed her title as "Chief Financial Officer" in email
15 signature lines.
- 16 • KLIMOVA communicated with PLAINTIFF's California IP counsel
17 regarding payment and invoices.
- 18 • STEBLEVA affirmed her title of Vice President, Business
19 Development was affirmed in email signature lines and in media
20 interviews.
- 21 • STEBLEVA communicated directly with PLAINTIFF's California
22 employees, including those employed at the Palo Alto Showroom, and
23 was authorized to direct their work.
- 24 • STEBLEVA twice traveled to California on PLAINTIFF's business and
25 all three defendants took business trip
- 26 • S received, and accepted, substantial compensation paid by PLAINTs to
27 the United States to promote PLAINTIFF's business.
- 28 • Each of the INDIVIDUAL DEFENDANTIFF and drawn from
PLAINTIFF's California bank account.
- Each of the INVIDIVUAL DEFENDANTS obtained a visa for travel to
the United States, and did in fact travel in the United States for business
related to PLAINTIFF, for which they were reimbursed.

29. Moreover, each of the INDIVIDUAL DEFENDANTS' tortious conduct violates the terms of agreements that are explicitly governed by California law. Also, given that each of the INDIVIDUAL DEFENDANTS performed work for PLAINTIFF in some executive capacity, each of the INDIVIDUAL DEFENDANTS would understand the business relationships affected by their breaches of those agreements, and they would know that harm was likely to be suffered in California.

30. Jurisdiction is also appropriate over each of the INDIVIDUAL DEFENDANTS because their activities caused harm in this district which would not have otherwise arisen absent the employment relationships with plaintiff.

31. Finally, fair play and substantial justice are served by the exercise of jurisdiction over each of the INDIVIDUAL DEFENDANTS.

B. Jurisdiction over the Corporate Defendants.

32. The Court has personal jurisdiction over A-STAR, ID-WISE, and AXON because each of them has purposefully directed its activities toward the state of California and this action is based upon activities that arise out of or relate to those contacts. Alternatively, the Court has personal jurisdiction over A-STAR and ID-WISE because each of them is an alter ego of KLIMOV, and vice versa.

1. Personal Jurisdiction over A-Star

33. The Court has personal jurisdiction over A-STAR because, as alleged herein, A-STAR tortiously interfered with the prior and prospective contractual relationships between ARTEC and its distributors, including AXON.

34. For example, in entering into the unlawful A-Star/Axon contract to sell ARTEC's brand name "Broadway 3D" products or infringing derivatives thereof at below-market rates, A-STAR and its agents and employees, including KLIMOV, knew that they were (a) causing AXON to breach the terms of the August 8, 2012 Non-Exclusive Distribution Agreement between AXON and ARTEC, which was explicitly governed by California law; and (b) usurping the business opportunities of ARTEC, which would have sold its Broadway 3D devices to AXON directly but for A-STAR's unlawful acts.

1 35. Furthermore, because the INDIVIDUAL DEFENDANTS were all trusted
2 agents and executives ARTEC, A-STAR would have known that ARTEC is a California
3 corporation with its principal place of business in California, and that A-STAR's sale of
4 cut-rate derivative (or stolen) products to ARTEC's business partners would cause ARTEC
5 harm in California.

6 36. In addition, ARTEC is informed and believes that A-STAR's agents stole or
7 orchestrated the theft of saleable inventory of some or all of the 112 Broadway devices
8 involved in its sale to AXON, or the parts and software needed to manufacture and
9 assemble the devices, which prevented those devices and components to be sold by
10 ARTEC, including in California, at a loss to ARTEC in California.

11 37. In addition, A-STAR, through the INDIVIDUAL DEFENDANTS, interfered
12 with the contractual relationships between ARTEC and its employees, for example causing
13 them to perform work on behalf of A-STAR, to provide A-STAR with ARTEC's
14 misappropriated trade secrets, and to otherwise aid and abet A-STAR and its agents to
15 unlawfully compete against ARTEC, all while such employees were employed by ARTEC
16 and earning valuable consideration. A-STAR is therefore liable for (a) the value of the
17 work performed by ARTEC's California employees for which ARTEC received no
18 benefit, (b) for the consideration paid by ARTEC to those employees (by ARTEC's
19 California bank) whose work was secretly benefiting A-STAR, and (c) the lost profits
20 incurred by ARTEC due to delays in completing ARTEC GROUP prototypes and software
21 after A-STAR poached many of its programmers and engineers.

22 38. Jurisdiction is further proper because ARTEC's claims against A-STAR
23 arise out of its theft of ARTEC's devices and/or components and misappropriation of
24 software and source code, its interference with ARTEC's agreement with AXON, and its
25 interference with the contracts of ARTEC's employees, *inter alia*.

26 39. Finally, fair play and substantial justice are served by the exercise of
27 jurisdiction over A-STAR.
28

1 40. Alternatively, jurisdiction over A-STAR is proper because it is an alter ego
 2 of KLIMOV, and vice versa. Since late 2014, KLIMOV has played a “shell-game” using
 3 various corporations, of which A-STAR is just one, to perpetuate his own fraud and private
 4 vendetta against ARTEC by unlawfully competing against ARTEC, usurping its business
 5 opportunities and interfering with its contracts. By cloaking himself in the corporate form
 6 and by carrying out his unlawful acts through a series of newly established corporate
 7 entities, he seeks to escape liability, and an injustice would result if his unlawful actions
 8 and contacts with California were not imputed to A-STAR. In addition:

- 9 • On information and belief, KLIMOV entered into negotiations with
 10 AXON for the unlawful sale of ARTEC’s Broadway 3D devices or
 11 infringing derivatives thereof before he incorporated A-STAR.
- 12 • On information and belief, KLIMOV has improperly commingled his and
 13 his co-conspirators’ personal funds and assets with those of A-STAR.
- 14 • Based on official sources, KLIMOV is presently the General Director and
 15 sole shareholder of A-STAR.
- 16 • On information and belief, there is no distinction between the employees
 17 and agents of ID-WISE and A-STAR, no separation of resources or
 18 technology, and KLIMOV shares his work office with ID-WISE and A-
 19 STAR.
- 20 • On information and belief, there is no distinction between the employees
 21 and agents of ID-WISE and A-STAR, no separation of resources or
 22 technology, and KLIMOV shares his work office with ID-WISE and A-
 23 STAR.

24 41. Alternatively, since this Court has jurisdiction over KLIMOV, it has
 25 jurisdiction over A-STAR, which he dominates and controls. Because A-STAR is merely
 26 the instrumentality of KLIMOV, it should be deemed through KLIMOV’s contacts to have
 27 sufficient contact with California to support personal jurisdiction.

28 42. Alternatively, under the totality of the circumstances, this Court has
 jurisdiction over A-STAR.

2. Personal Jurisdiction over ID-Wise.

43. The Court has personal jurisdiction over ID-WISE because of its multiple contacts with

44. ID-WISE's infringing product, the Thor3D Scanner, advertised on proxy website <https://spacetime4d.com>, listed a U.S. contact number for product purchases: 360-880-5218.⁶

45. The Thor3D website specifically solicits United States and, necessarily, California consumers by accepting payments via "**wire transfers to EU and US banks.**"⁷ The "to" is critical, as this demonstrates that Thor3D (and thus ID-Wise) operates at least one bank account in the United States.

46. ID-WISE's employee or agent Anna Zevelyov, a California resident, has contacted ARTEC's United States distributors and attempted to induce them to break their contractual and business relationships with ARTEC and instead sell ID-WISE's Thor3D brand scanner, which is based on ARTEC's misappropriated trade secrets and directly competes with ARTEC's own products.

a. Distributor A: In August 2015, ARTEC learned that Zevelyov had contacted "Distributor A", an official ARTEC distributor, and sought to induce Distributor A to purchase Thor3D scanners in lieu of ARTEC's scanners in violation of Distributor A's agreements with ARTEC. Distributor A and related entities are registered California corporate entities licensed to do business in California with agents for service of process in Bakersfield, CA. On information and belief, Distributor A also has offices in Tustin, California and hold training events in Irvine.

b. Distributor B: ARTEC has also discovered that Zevelyov contacted "Distributor B," a U.S. distributor with locations in San Jose, Los Angeles, and San Diego.

⁶ See <https://spacetime4d.com/contact-us/> (last visited Dec. 29, 2015). As of the date of this filing, the website has reverted to being "under construction."

⁷ See <http://thor3dscanner.com/buy/> (last visited Jan. 4, 2016).

1 Through Zevelyov, ID-WISE contacted Distributor B to induce it to breach its agreement
2 with ARTEC and to sell ID-WISE's Thor3D competing scanner.

3 c. Both Distributor A and Distributor B are existing ARTEC distributors
4 subject to Non-Exclusive Distribution Agreements governed by California law and a
5 forum selection clause consenting "to the exclusive jurisdiction and venue in the state and
6 federal courts in Santa Clara County, California." DEFENDANTS, and each of them, are
7 and at all times were aware of ARTEC's relationship with Distributor A and Distributor B.
8 Zevelyov personally communicated with one or both distributors while employed by
9 ARTEC and sought to engage them to sell ARTEC devices.

10 d. On information and belief, Zevelyov and/or other agents or ID-WISE
11 also contacted other ARTEC distributors who conduct business in California and
12 attempted to breach their contractual relationships with ARTEC and sell Thor3D Scanners
13 in lieu of, and/or in addition to ARTEC's competing scanners without advising ARTEC.

14 e. KLIMOV, Zevelyov, and other agents and employees of ID-WISE,
15 knew that Distributor A, Distributor B, and other U.S. distributors had preexisting
16 relationships with ARTEC, and that ARTEC would be damaged in California if ID-WISE
17 usurped its business opportunities and caused its distributors to breach their contractual
18 obligations to ARTEC.

19 47. In addition, ID-WISE, through the INDIVIDUAL DEFENDANTS,
20 interfered with the contractual relationships between ARTEC and its employees, for
21 example causing them to perform work on behalf of ID-WISE, to provide ID-WISE with
22 ARTEC's misappropriated trade secrets, and to otherwise aid and abet ID-WISE and its
23 agents to unlawfully compete against ARTEC, all while such employees were employed
24 by ARTEC and earning valuable consideration. ID-WISE is therefore liable for (a) the
25 value of the work performed by ARTEC's California employees for which ARTEC
26 received no benefit, (b) for the consideration paid by ARTEC to those employees (by
27 ARTEC's California bank) whose work was secretly benefiting ID-WISE, and (c) the lost
28

1 profits incurred by ARTEC due to delays in completing ARTEC GROUP prototypes and
2 software after A-STAR poached many of its programmers and engineers.

3 48. Jurisdiction is further proper because ARTEC's claims against ID-WISE
4 arise out of its misappropriation of software and source code, its unfair competition in
5 developing competitive devices reliant on ARTEC's trade secrets, its interference and
6 attempted interference with ARTEC's distributors doing business in California, and its
7 interference with the contracts of ARTEC's employees, *inter alia*.

8 49. Finally, fair play and substantial justice are served by the exercise of
9 jurisdiction over ID-WISE.

10 50. Alternatively, on information and belief, jurisdiction is proper over ID-WISE
11 because it is the alter ego of KLIMOV, as follows:

- 12 • On information and belief, KLIMOV held himself out as "ID-WISE"
13 even before its incorporation. For example, as alleged herein, at the
14 "Intersec" safety and security exposition held from January 18 to 20,
15 2015, KLIMOV and his co-conspirators (while serving as ARTEC's
16 officers, directors, and trusted agents) exhibited under the name "ID-
17 WISE," although ID-WISE was not incorporated until January 22, 2015.⁸
- 18 • KLIMOV has registered copyrights (based on ARTEC's trade secrets) in
19 Russia under his own name, which on information and belief have been
20 used by A-STAR and ID-WISE without any assignment, transfer, or
21 exchange of funds.
- 22 • On information and belief, KLIMOV has improperly commingled his
23 personal funds and assets, and those of his co-conspirators, with those of
24 ID-WISE.
- 25 • On information and belief, although ID-WISE is incorporated in Latvia, it
26 does not have a physical office, employees, or any material assets in
27 Latvia.
- 28 • ARTEC alleges that KLIMOV has played a "shell-game" using various
corporations, such as ID-WISE, to perpetuate his own fraud and private

27 ⁸ Additionally, at KLIMOV's direction, two ARTEC employees attended the
28 Intersec Expo under the brand name ID-Wise (booth was payed and rented from ID-wise)
with devices that competes with Artec Broadways and Intercoms.

1 vendetta against ARTEC by unlawfully competing against ARTEC,
2 usurping its business opportunities and interfering with its contractual
relationships.

- 3 • Based on official sources, KLIMOV is the General Director and sole
4 shareholder of ID-WISE.
- 5 • On information and belief, there is no distinction between the employees and
6 agents of ID-WISE and A-STAR, no separation of resources or technology,
and KLIMOV shares his work office with ID-WISE and A-STAR.

7 51. Alternatively, since this Court has jurisdiction over KLIMOV, it has
8 jurisdiction over ID-WISE, which he dominates and controls. Because ID-WISE is merely
9 the instrumentality of KLIMOV, it should be deemed through KLIMOV's contacts to have
10 sufficient contact with California to support personal jurisdiction.

11 52. Alternatively, under the totality of the circumstances, this Court has
12 jurisdiction over ID-WISE.

13 3. Minimum Contacts with Axon.

14 53. The Court has jurisdiction over AXON because the Non-Exclusive
15 Distribution Agreement between ARTEC and AXON, which ARTEC alleges was
16 breached when AXON entered into an unlawful contract with A-STAR, constituted a
17 contractual agreement with a California entity. Moreover, the Axon Agreement
18 contemplated the application of California law:

19 10. APPLICABLE LAW

20 10.1 This Agreement shall be governed by and enforced and
21 interpreted in accordance with the laws of the State of
22 California, USA (without regard to any conflicts of laws
23 principles thereof) including the Uniform Commercial Code as
adopted in California, to the exclusion of the UN Convention
on Contracts for International Sales of Goods (CISG).

24 54. Thus, AXON was aware that any breach of the agreement would damage
25 ARTEC in California, and in fact ARTEC has been so damaged.

26 55. In addition, AXON knew that ARTEC alleges that the devices AXON
27 purchased from A-STAR were counterfeit or stolen, as on February 27, 2015 ARTEC's
28

1 counsel sent a cease and desist letter to AXON's Managing Director Ijaz Anwer and Head
 2 of Department Rafiq Roshan Ali via express mail, e-mail, and facsimile advising them of
 3 the same, to which AXON responded. A second cease and desist letter was sent on May 3,
 4 2015 to Hamdam Mostafa, General Manager of AXON.

5 56. Despite its breaches and AGC's cease and desist letters, AXON continues to
 6 promote itself as a carrier of AGC products. The "About Axon" page of their website
 7 states that "Our team receives regular trainings at . . . ArtecID⁹ . . . and other globally
 8 acclaimed partners,"

9 57. In addition, AXON's own website confirms its contacts with the United
 10 States: "Our products are certified by recognized global certification bodies such as
 11 **Underwriter's Laboratories (USA).**"¹⁰ This would necessarily imply extensive
 12 communications with Underwriter's Laboratories in the United States, to include providing
 13 samples of products and specifications, to obtain the "UL" badge on its products.

14 58. Alternatively, under the totality of the circumstances, this Court has
 15 jurisdiction over AXON.

16 **IV. SUMMARY OF FACTS.**

17 **A. Artec Is a Successful Developer and Manufacturer of Proprietary 3D Scanners** 18 **and 3D Facial Recognition Technology.**

19 59. ARTEC is the eponymous¹¹ company of founder Artyom Yukhin aka Artem
 20 Yukhin ("YUKHIN"), a successful entrepreneur whose high tech investments have
 21 brought jobs and revenue to the Silicon Valley.

22 60. Throughout the relevant time period, YUKHIN has served as ARTEC's
 23 President, Chairman of the Board, and Secretary.

24
 25
 26 ⁹ ArtecID is a trademark of ARTEC GROUP products.

27 ¹⁰ See <http://www.axon.ae/about-axon> (last visited Jan. 10, 2016).

28 ¹¹ The name "Artec" is a compound of "Art" (as in Artyom Yukhin) and "Tech."

61. Starting in 2008, ARTEC was managed by a group of four individuals who concurrently served as officers and directors, who among them account for 98 percent of the shares of stock of the corporation. Those four individuals are YUKHIN, Sergey Suhovey (“SUHOVEY”), Gleb Gusev (“GUSEV”) and Defendant KLIMOV, as follows:

<u>Name</u>	<u>Office</u>	<u>No. Shares</u>	<u>% of Total</u>
Artyom Yukhin	President, Secretary, CFO	29,500	29.5%
Andrey Klimov	Chief Executive Officer	29,500	29.5%
Gleb Gusev	Chief Technology Officer	19,500	19.5%
Sergey Suhovey	Chief Marketing Officer	<u>19,500</u>	<u>19.5%</u>
Totals		98,000	98.0% ¹²

62. In addition, KLIMOVA served as the Company’s de facto Chief Financial Officer and as legal and financial consultant during relevant time periods.

63. ARTEC is one of three affiliated corporations of the Artec Group of Companies (the “ARTEC GROUP”), the other two being Artec Europe, S.a.r.l., a Luxembourg company, and OOO Artec Ventures, a Russian company. The three companies generally share a board of directors and officers and coordinate operations and technology. ARTEC, Artec Europe, and Artec Ventures are collectively referred to herein as the “ARTEC GROUP” or the “Artec Group of Companies.”

64. The Artec Group of Companies, although separately incorporated, are collectively involved in the research and development, production, manufacturing, sales, and marketing of ARTEC GROUP Devices. All product lines are shared across the Artec Group of Companies, and employees and service providers of all three Artec Group companies have access to a shared document database. Engineers employed by all three entities routinely collaborate on product research and development, and on technological improvements for existing products. Trade secrets, Inventions and Confidential Information, as defined in corporate documents, thus collectively are developed by the Artec Group companies and each company lawfully possesses and uses the Trade secrets,

¹² There are also two minor shareholders who each own one thousand shares of the company, representing 1% of the total outstanding shares.

1 Inventions and Confidential Information. Similarly, unfair competition, corporate raiding,
2 piracy, theft, or sabotage impacting one ARTEC GROUP company has a detrimental
3 financial effect on all ARTEC GROUP companies.

4 65. ARTEC has obtained multiple patents in the U.S. and internationally related
5 to 3D facial recognition technology, which has the capacity to recognize the facial
6 structure of tens of thousands of unique individuals (much like a fingerprint), and to not be
7 fooled by glasses, caps, or growth of facial hair.

8 66. For a number of years ARTEC has been in development of an “intercom”
9 device, by which facial recognition technology could be coupled with access control
10 technology, such that when the device recognized a visitor via facial scan, it caused the
11 door or gate to open, while an unrecognized visitor would be required to proceed to further
12 identification procedures. The intercom device was predicated largely on the technology
13 underlying ARTEC’s other product lines, but also required the development of new source
14 codes, algorithms, and software to permit the seamless interaction between the scanner and
15 a variety of access control devices. The intercom project was a project of high importance
16 to ARTEC and was anticipated to derive a material portion of ARTEC’s revenues. In
17 addition, ARTEC has been in development of a wireless, handheld version of its popular
18 Eva and Spider brand name scanners.

19 67. Many of ARTEC’s employees, who subsequently were induced to work for
20 DEFENDANTS to develop competing devices, were involved while employed by ARTEC
21 in programming and engineering the intercom and handheld scanner prototypes. On
22 information and belief, most or all engineers and programmers who comprised the “rogue
23 group” continue to unlawfully develop competing devices and software on behalf of ID-
24 WISE, A-STAR and other KLIMOV corporations (such as Sense Technology).

25 **B. Artec’s Employment Agreements with Its Employees and Service Providers.**

26 68. As relevant to these claims, ARTEC entered into two key agreements with
27 the INDIVIDUAL EMPLOYEES – an Employment Agreement and a Noncompetition,
28

1 Confidentiality, Inventions Agreement (“NCIA”). The agreements were generally entered
2 into on the same date.

3 1. The Employment Agreements.

4 69. Each of the INDIVIDUAL DEFENDANTS was a party to an Employment
5 Agreement with ARTEC. With the exception of differences in name, date, job title, pay,
6 and the like, the Employment Agreements are identical in all material aspects.

7 70. The Employment Agreements are sequentially numbered, such that each
8 employee has an Employment Agreement bearing a unique numerical identifier. During
9 their employment, each of the INDIVIDUAL DEFENDANTS voluntarily and knowingly
10 entered into an Employee Agreement, as follows:

<u>Employee Name</u>	<u>Agreement No.</u>	<u>Date</u>
Andrey Klimov	C/10-07	May 15, 2010
Yulia Klimova	A/09-28	March 1, 2009
Anna Stebleva	A/09-27	March 1, 2009

14
15 71. Among the key provisions relevant to this matter are the following:

16 a. Duty of loyalty: Section 2.01 (“General Duties”) sets forth an
17 expectation of loyalty and performance of duties within the scope of employment, as
18 follows:

19 Subject to the supervision and pursuant to the orders, advice,
20 and direction of the Employer, the Employee shall perform
21 such duties as are customarily performed by one holding such
position in other businesses or enterprises of the same or
similar nature as that engaged in by the Employer.

22 b. Attorney fees provision: Section 7.01 of each Employment
23 Agreement provided that in an action “to enforce or interpret the terms of this agreement,”
24 the prevailing party “shall be entitled to reasonable attorney’s fees, costs, and necessary
25 disbursements in addition to any other relief to which such party may be entitled.”

26 c. Applicability of California law: The Employment Agreements are
27 governed by California law. For example, Section 9.04 provides that “[t]his Agreement
28

1 shall be governed by and construed in accordance with the laws of the State of California.”

2 Likewise, Section 6.01(“At-Will Employment”) quotes Labor Code section 2922.

3 d. Agreement not to compete with Artec during employment: Section
4 8.01 (“No Conflicting Employment”) provided that the KLIMOV, KLIMOVA, and
5 STEBLEVA could not engage in any employment or business activity “directly related” to
6 ARTEC’s business during the term of their employment, and would not engage in “any
7 other activities that conflict with his/her obligations to the Company.”

8 e. Incorporation of the NCIA: Section 9.02 (“Containment of Entire
9 Agreement herein”) incorporates by reference the Noncompetition, Confidentiality,
10 Inventions Agreement, and states that the Employment Agreement and NCIA “supersede
11 any and all other agreements, either oral or in writing, between the parties”

12 2. Artec’s Noncompetition, Confidentiality, Inventions Agreements with
13 Its Employees.

14 72. In addition to the Employment Agreements described *supra*, ARTEC
15 required all of its employees, including the INDIVIDUAL DEFENDANTS, to execute a
16 Noncompetition, Confidentiality, Inventions Agreement (“NCIA”) during the term of their
17 employment. The NCIA’s required ARTEC’s employees to safeguard and protect the
18 confidentiality of ARTEC’s “Inventions” and “Confidential Information,” as defined in the
19 NCIA,¹³ and prohibited the unauthorized disclosure or use of ARTEC’s proprietary
20 information. For example:

21
22
23 ¹³ Section 1.1 of each the NCIA stated the following: “‘Confidential Information’
24 shall include, without limitation, whether tangible or intangible (i) all information relating
25 to intellectual property, including, without limitation, licenses, patents, trademarks,
26 tradenames, servicemarks and copyrights, (ii) trade secret data and related information,
27 (iii) all information relating to the development, research, testing, manufacturing and
28 marketing activities and techniques of the Company, (iv) all information relating to the
products manufactured, sold or distributed by the Company, (v) all information relating to
the raw materials, costs, sources of supply and strategic plans of the Company, (vi) all
information relating to the identity of special needs of the customers of the Company, (vii)
all information relating to the persons and organizations with whom the Company has or
has had business relationships, including, without limitation, customer lists, (viii) all
information relating to the identity of prospective customers of the Company and (ix) all

1 a. Disclosure of Confidential Information prohibited: Section 2 (“Non-
 2 disclosure of Confidential Information”) of each NCIA provided that it was “unlawful”
 3 for employees to “appropriate, to attempt to appropriate, or to disclose” Confidential
 4 Information. Employees were further required to “hold in confidence all Confidential
 5 Information” received and “not to use, disclose, reproduce, or dispose of such Confidential
 6 Information in any manner” except in performance of job duties or required by law.
 7 Section 2.4 contained an agreement that “all Confidential Information is the product of the
 8 Company, regardless if Employee is directly or indirectly involved in the development or
 9 creation of such Confidential Information.” Section 2.6 contained an agreement that each
 10 employee would “deliver to the Company (and will not keep in his/her possession, recreate
 11 or deliver to anyone else)” any Confidential Information or any devices, correspondences,
 12 or documents containing Confidential Information.

13 b. Artec owns all inventions unless specified: Section 4 (“Ownership of
 14 Inventions”) provided in relevant part that the “**Employee agrees to assist the Company**
 15 **... to secure the Company's rights in the Inventions** and any copyrights, patents, [etc.]
 16 ... including the disclosure to the Company of all pertinent information and data with
 17 respect thereto.” This obligation explicitly continued “after the termination of this
 18 Agreement. . . .”

19 c. Use of trade secrets to solicit employees, customers, or vendors
 20 prohibited: Section 5 of the Agreement (“No Solicitation”) states the following, in relevant
 21 part:

22 5.1 Employee agrees that some restrictions on his\her activities
 23 during and after his\her employment with the Company are
 24 necessary to protect the goodwill, Confidential Information,
 25 Inventions and other legitimate business interests of the
 26 Company. In recognition thereof, while he\she is employed by
 the Company and for a period of twelve (12) months thereafter,
 Employee shall not, without the written consent of the
 Company, directly or indirectly **attempt to hire any employee**
of the Company, assist in such hiring by any other person,

27 _____
 28 other information which the Company deems confidential and proprietary in its sole
 discretion.”

encourage any such employee to terminate his\her relationship with the Company, or solicit or encourage any customer or vendor of the Company to terminate its relationship with the Company

d. Obligation to return all Confidential Information upon termination:

Section 6 of the Agreement (“Surrender of Confidential Information and Inventions”) required employees to “surrender to the Company upon termination” all “written or otherwise tangible documentation, in whatever form, representing or embodying Confidential Information or Inventions or copies thereof”

e. Indemnification and attorney fees: Significantly, Section 8 (“Survival; Relief”) of each NCIA provided for the recovery of attorney fees and costs, in addition to injunctive relief and other damages, in the event of breach:

8.1 . . . Employee acknowledges that a violation of the provisions of this Agreement by Employee may result in **irreparable harm to the Company**. Therefore, Employee agrees that the Company shall be entitled to **preliminary and permanent injunctive relief** against any breach by Employee of the provisions of this Agreement, without having to post bond; provided, that nothing in the foregoing clause shall limit the **Company’s right to seek monetary damages, including, without limitation, attorney’s fees, costs and disbursements**, as it may have sustained in the event of the violation by Employee of any of the provisions of this Agreement.

f. California law applies: By their terms, the NCIAAs were to “be governed and construed in accordance with the laws of the State of California without regard to the conflict of laws principles thereof.” (Section 10.3.) Also, Exhibit B to each agreement, entitled “California Labor Code Section 2870 / Employment Agreements; Assignment Of Rights,” quoted directly from Labor Code § 2870 and bound the parties thereto.

73. On information and belief, each of the INDIVIDUAL DEFENDANTS entered into an NCIA at the time that he or she executed his or her Employment Agreement. Each of the INDIVIDUAL DEFENDANTS was bound by the NCIA at all relevant times, and continue to be bound.

74. Furthermore, on information and belief, A-STAR and ID-WISE were actually aware of the provisions of the Employment Agreements and the NCIAAs.

C. Artec's Distributorship Agreement with Axon Business Systems.

75. ARTEC's business model is structured on a network of distributor relationships in various countries in which the company seeks to sell its products.

76. On August 8, 2012, ARTEC entered into a "Non-Exclusive Distribution Agreement" with Axon Business Systems LLC ("AXON"), a United Arab Emirates company. The Axon Agreement granted AXON the right to sell ARTEC's facial recognition devices and 3D scanners, including in connection with its trademarked "Broadway 3D" lines, to purchasers in the UAE. In exchange, AXON agreed to protect ARTEC's Trade Secrets and Confidential Information obtained during the course of the parties' relationship.

77. The term of the Axon Agreement was for one year (subject to renewal on agreement of the parties), the parties also agreed that certain provisions would survive the termination of the Axon Agreement, particularly in respect to Confidential Information, as defined in Section 1.1 of the Agreement (which definition includes "trade secrets").¹⁴

78. Section 2.9 prohibited AXON even after the term of the Agreement from "distribut[ing] equipment or products similar to or competitive with the Products in the Territory without ARTEC's prior written consent" and further required that AXON "keep

¹⁴ Under Section 1.1 of the Axon Agreement, "Confidential Information" is defined as "intellectual property, trade secrets, and other proprietary information relating to ARTEC's business strategies, plans, financial data, projections, customer information, markets, and Products (as hereinafter defined), but shall not include any such information which (i) as of the date of disclosure to Distributor was already lawfully in Distributor's possession and not subject to a non-disclosure or confidentiality arrangement; (ii) Distributor independently develops, as shown by written records; (iii) is or becomes publicly available without a breach of this Agreement; or (iv) Distributor rightfully receives from a third party who is lawfully in possession of such information and under no obligation to maintain its confidentiality."

1 ARTEC informed of Distributor's current or future sales of equipment or products similar
2 to or competitive with" ARTEC's products.¹⁵

3 79. Similarly, Section 2.11 required AXON as a continuing obligation to "notify
4 ARTEC promptly of any and all **infringements**, limitations, simulations, **unlawful uses**,
5 or misuses of the ARTEC Marks, patents, and other intellectual property rights."¹⁶

6 80. Section 2.12 stated, "Distributor shall maintain in confidence and not
7 disclose to any third party any Confidential Information" and that "Distributor shall not
8 use the Confidential Information to the detriment of ARTEC under any circumstances."
9 The Parties contemplated that "Distributor's obligations with respect to the disclosure and
10 use of Confidential Information shall survive the termination or expiration of this
11 Agreement."

12 81. Section 7.5 of the Agreement stated, "Upon termination of this Agreement,
13 Distributor shall immediately cease all use of the ARTEC marks." Thus, AXON was
14 prohibited from selling or marketing any of ARTEC's marks, including Broadway 3D.

15 82. Section 10.1 of the Axon Agreement ("Applicable Law") provided that "This
16 Agreement shall be governed by and enforced and interpreted in accordance with the laws
17 of the **State of California, USA** (without regard to any conflicts of laws principles
18 thereof) including the Uniform Commercial Code as adopted in California."

19 83. Each of the above-referenced provisions were continuing obligations which
20 **survived** the non-renewal of the Axon Agreement.

21 **D. Overview of Defendants' Unlawful Actions.**

22 84. ARTEC enjoyed the benefits of its various agreements with its employees
23 and its regional distributors, and also performed all of its duties under these agreements,
24 _____

25 ¹⁵ Under Section 7.2, "The restrictions on the use and dissemination of Confidential
26 Information stated in Sections 1.1 and **2.9 shall survive the termination of this Agreement.**" Section 1.1 contained the definition of "Confidential Information."

27 ¹⁶ Under Section 8.2, "The representations, warranties and covenants set forth in
28 Sections 2.10, 2.11, and 3.5 and the indemnification obligations in Section 6.6 **shall survive the termination of this Agreement.**"

1 and at all times used reasonable steps to safeguard its Confidential Information and Trade
2 Secrets. Prior to February 12, 2015, ARTEC had no reason to suspect or believe that any
3 of its employees, including the INDIVIDUAL DEFENDANTS, or any of its distributors,
4 including AXON, had taken any action in breach of their duties or contractual agreements,
5 or in violation of any law.

6 85. On February 12, 2015, documents were discovered at co-conspirator Olga
7 Chernetskaya's office in Moscow (OOO Artec Ventures office) that linked KLIMOV,
8 along with the other INDIVIDUAL DEFENDANTS, to a wide-ranging conspiracy
9 involving members of ARTEC's top management and engineers, as well as rank and file
10 employees. Subsequent investigation revealed that KLIMOV, along with KLIMOVA and
11 STEBLEVA, had led a group of rogue employees, including programmers, engineers, and
12 administrators, to breach their contracts with ARTEC in order to compete directly against
13 ARTEC in the field of 3D facial recognition scanners, solicit ARTEC's customers, and
14 usurp ARTEC's business opportunities.

15 86. Based on the investigation conducted, and subsequent information obtained
16 from the hard drives of the INDIVIDUAL DEFENDANTS' work computers, on ARTEC's
17 servers, and in the INDIVIDUAL DEFENDANTS' company emails, ARTEC is informed
18 and believes that KLIMOV orchestrated this covert conspiracy sometime in mid-2014
19 while serving as its CEO and Director. During this time, KLIMOV induced or coerced
20 other current ARTEC employees to breach their contracts with the Company and provide
21 him access to Trade Secrets and other Confidential Information via ARTEC's secure
22 interface, and forward him key source code of ARTEC's proprietary software. In addition,
23 ARTEC uncovered a series of emails between Peter Parkhalin (Senior Programmer) and
24 KLIMOV in which Parkhalin provided KLIMOV with access to Artec Group proprietary
25 source code and algorithms, and forwarded him proprietary documents.

26 87. The conspiracy was further manifested through written correspondence
27 obtained by ARTEC: In Skype chats and emails with KLIMOV, his co-conspirators openly
28

1 referred to going “**underground**,” circulated their “**conspiracy e-mail address**,” and
2 referred to opening an “**independent company**” and being “**independent from Artem**.”

3 88. In November 2014, KLIMOV in collaboration with a group of rogue
4 ARTEC employees, founded A-STAR, a Russian corporation, and KLIMOV began doing
5 business under that name. On information and belief, the INDIVIDUAL DEFENDANTS
6 falsely represented to Artec Group’s business partners that A-STAR was a legitimate Artec
7 Group entity or affiliate. In that way, they induced Artec Group distributors and customers
8 to do business with A-STAR instead of the Artec Group.

9 89. Through A-STAR, the INDIVIDUAL DEFENDANTS sold and
10 manufactured competing 3D devices based on ARTEC’s Trade Secrets and Confidential
11 Information to undermine its invaluable vendor and distributor relationships.

12 90. For example, on January 7, 2015, while continuing to serve as CEO and
13 Director, KLIMOV executed a Product Supply Agreement on behalf of A-STAR with
14 AXON, a longtime ARTEC distributor in the United Arab Emirates. The Product Supply
15 Agreement called for the sale of 112 of ARTEC’s “Broadway 3D” facial recognition
16 devices and scanners for \$819,273, which prices were below ARTEC’s set wholesale
17 prices. Those revenues were never reported to or shared with ARTEC. The agreement
18 not only violated KLIMOV’s duty of loyalty and contractual obligations, but it also
19 violated AXON’s prior agreement with ARTEC.

20 91. ARTEC also discovered that on January 22, 2015, while still employed as
21 ARTEC CEO, KLIMOV incorporated the company ID-WISE to compete against ARTEC
22 in the realm of facial recognition technology, and to exploit ARTEC’s Trade Secrets and
23 Confidential Information.

24 92. Immediately following the discovery of the conspiracy on February 12,
25 2015, KLIMOV’s employment, directorship, and position as CEO were terminated
26 through action of a majority of shareholders and directors, due to the discovery of the
27 unlawful and injurious actions that form the basis of this complaint.
28

93. KLIMOVA was also relieved of all duties as CFO and as Legal and Financial Consultant and STEBLEVA her duties as Vice President of Business Development. The INDIVIDUAL DEFENDANTS' access to ARTEC's servers, databases, and email has since been revoked.¹⁷

94. However, the INDIVIDUAL DEFENDANTS, A-STAR, and ID-WISE (as well as related entities) have continued to do business in a manner injurious to ARTEC. They are now openly competing against ARTEC, using misappropriated Artec Group Trade Secrets and Confidential Information that they purloined while ostensibly carrying on as loyal employees. ARTEC has uncovered evidence of cash transfers from A-STAR to certain of ARTEC's suppliers in exchange for products that are in every material respect identical to ARTEC's own products.

E. Klimov Conspires with Managerial and Lower Level Employees to Sabotage and Compete Directly Against Artec.

1. The Correspondences Written Among Individual Defendants Reveal an Intent to Conspire Against Artec and Concrete Steps to Attain that Goal While Employed by Artec.

95. Correspondences and chat sessions uncovered by ARTEC from company email and hard drives reveal the development of the conspiracy to compete against ARTEC by many of the INDIVIDUAL DEFENDANTS, during the term of their employment with ARTEC. The following reflects a small portion of those communications:

96. Emails and Skype chats reveal that STEBLEVA actively recruited Artec's employees to join the current "rogue employees," while she was employed at Artec. As an inducement, she offered them double their current salary.

¹⁷ Nevertheless, from time to time, the INDIVIDUAL DEFENDANTS have been sent emails to their ARTEC email addresses, which further demonstrate their continued breaches of contract and their duties to ARTEC.

1 97. In Skype conversations dating from August and September 2014, KLIMOV
2 discussed the creation of an external source code repository for software modifications,
3 and new scanner hardware and software development.¹⁸ An external repository would
4 directly conflict with ARTEC's security protocols and safeguards of its Confidential
5 Information and Trade Secrets.

6 98. In a Skype chat dated September 20, 2014 between KLIMOV and
7 STEBLEVA stated, **"in order to make money, it is necessary to open an independent**
8 **company in Europe,"** and added, **"independent from Artem [Yukhin]."** KLIMOV
9 responded, **"Opening a company is not a problem."** The two then brainstormed about
10 what markets to tap, mentioning Germany, Finland, the Czech Republic

11 99. In the same conversation, STEBLEVA also proposed getting "Sasha
12 [Alexander Lomakin, an Artec Europe service provider], Anya [Anna Zevelyov], I, you,
13 Yulia [Yulia Klimova], Kolya [ARTEC Senior Programmer Nikolay Kulikov] and
14 everyone together to talk."

15 100. On November 7, 2014, STEBLEVA engaged in a lengthy Skype chat with
16 KLIMOV regarding the employees that, on information and belief, would be needed to
17 open a competing business. For example, the two discussed "how any people will only
18 work on security," how much tech support," and needing programmers, hardware,
19 logistics, accounting, and a lawyer.

20 101. On November 14, 2014, STEBLEVA sent a Skype message to KLIMOV in
21 which she stated that she had attempted to register the domain name "3dflow.com" but that
22 it was registered to another company. ARTEC had not authorized any registration of
23 3dflow.com and had no knowledge of this.

24
25 _____
26 ¹⁸ The existence of an external repository for source code (as opposed to the internal
27 access-controlled Redmine system) would be antithetical to ARTEC's collaborative and
28 secured source code development processes. Also, KLIMOV had not discussed the
creation of a new line of scanners or software with any of the other ARTEC officers and
directors.

1 102. In a subsequent email chain involving KLIMOV and co-conspirators Igor
2 Poklad and Nail Salmanov, there are discussions of creating a new scanner, although not
3 an ARTEC scanner.

4 103. In a Skype conversation between STEBLEVA and co-conspirator Olga
5 Zinchenko (marketing manager) from January and early February 2015, the two discuss at
6 length ID-WISE devices. Zinchenko claimed that she told one potential client to check out
7 ID-WISE's intercom device instead of Artec's intercom. STEBLEVA also told Zinchenko
8 to delete all emails that she sent to her, including one email that she accidentally sent to the
9 ARTEC address.

10 104. In a Skype chat during the period of November 14, 2014 and December 4,
11 2014 between KLIMOV, Poklad, and Salmanov, Salmanov wrote the following: "Hello
12 everyone. **We've gone underground. In regards to the scanner, etc. etc., e-mails must**
13 **bypass official e-mail. Igor [Poklad], let me know the address of your conspiracy e-**
14 **mail."**

15 105. In Skype chats from December 2014 to early February 2015, STEBLEVA
16 and Zinchenko discussed the new "id-wise" brand, securing a new website, the branding of
17 a product line including "ID-Wise Gate" and "ID-Wise 3D Enterprise," and creating email
18 addresses @id-wise.com.

19 106. Also, a draft email dated January 20, 2015 was found on STEBLEVA's hard
20 drive, in which she appeared to be creating a budget for the conspirators' new separate
21 business related to security devices. That email goes so far as to list the individuals who
22 purportedly would be involved in the competing company, comprised of other then-
23 ARTEC and ARTEC GROUP employees. The email calculated the estimated gross
24 salaries of these prospective employees of the infringing company, as well as referencing
25 "Latvia," where ID-WISE was incorporated.

2. *Klimov Engaged in Documented Attempts to Obtain, Copy, and Misappropriate Artec's Confidential Information.*

107. On information and belief, one of KLIMOV's first overt acts in furtherance of the conspiracy to compete against the Artec Group was to obtain Artec Group source code and algorithms that were the building blocks for its proprietary 3D facial recognition scanners. The source code and algorithms were the result of years of investment by the Artec Group and all constituted Trade Secrets and/or Confidential Information.

108. The Artec Group spent significant sums over a period of years in developing and protecting Artec Trade Secrets and Confidential Information, which were not available to the general public. ARTEC had also spent considerable efforts to keep this information secure. Indeed, it was not even available to most ARTEC or Artec Group employees. Even KLIMOV did not have access. The only way to access these trade secrets/confidential information was through a project management tool called "Redmine" (see <http://en.wikipedia.org/wiki/Redmine>) and the GIT distributed revision control system ([https://en.wikipedia.org/wiki/Git_\(software\)](https://en.wikipedia.org/wiki/Git_(software))), which required users to enter a special username and password. Employees with access were prohibited from granting access to other employees without corporate approval.

109. In or about October 2014, KLIMOV demanded that ARTEC's system administrator issue to KLIMOV a username and password to Redmine in October 2014, which was in fact issued to KLIMOV on or around that time. As a Senior Engineer, Parkhalin enjoyed special access to the source code, proprietary algorithms and software for the Artec Group's products. With Parkhalin's assistance and at KLIMOV's direction, KLIMOV received a username and password to Redmine in October 2014.

110. On October 6, 2014, in breach of his contractual and legal obligations, Parkhalin sent an email to KLIMOV at his work address entitled "Redmine." The email provided copies of core algorithms, and source code, to KLIMOV. Parkhalin was not authorized to process such algorithms and source code to KLIMOV.

1 111. On October 8, 2014, after KLIMOV was granted access Redmine,
2 KLIMOV's newly acquired username and password were used to enter Redmine and, on
3 information and belief, download 18 separate Artec Studio algorithms. In addition, on
4 October 12, 2015, at KLIMOV's direction, Parkhalin downloaded core algorithms from
5 Redmine and transferred them to KLIMOV without ARTEC's authorization, approval, or
6 knowledge.

7 112. On October 13, 2014, Parkhalin emailed KLIMOV at his work address
8 entitled "algorithms' description." The email attached four files containing ARTEC
9 algorithms and code. Parkhalin's email stated as follows (translated from Russian):

10 Hello!

11 I am sending you descriptions of several basic algorithms.

12 **The code might raise many questions**, because in fact it is
13 much lengthier and I selected only parts of it. I took the
descriptions from various sources and added some of my own.

14 113. On October 15, 2014, Parkhalin sent a third email to KLIMOV, this time
15 attaching a file named "spider.docx" that he explained was a "Spider code," which were
16 code segments pertaining to ARTEC's Spider scanner. On information and belief,
17 DEFENDANTS in fact used the Spider code shortly thereafter to create their competing
18 Thor3D Scanner.

19 114. Through these and other unauthorized actions, Parkhalin provided KLIMOV
20 and other DEFENDANTS with the ability to reproduce, rely upon, and misappropriate
21 Artec Group Trade Secrets and Confidential Information for the purpose of unlawfully
22 competing against ARTEC.

23 115. ARTEC has further uncovered a "cracked" version of Artec Studio, the Artec
24 Group's proprietary software, on Parkhalin's network share. This "cracked" version
25 permitted KLIMOV and others to utilize and modify Artec Group source code, algorithms,
26 and software to replicate or alter saleable devices based on Artec Group Trade Secrets and
27 Confidential Information.
28

3. *Klimov Secretly Copyrighted Artec's Source Code and Software*
Under His Own Name During His Tenure as CEO.

116. KLIMOV further breached his agreements and duties with ARTEC by registering copyrights and trade names relying on or identical to Artec Group devices and technology, while still employed and serving as ARTEC CEO.

117. On or about December 15, 2014, KLIMOV applied for four copyrights in Russia in his individual capacity: One was entitled "Computer program for calculating the 3D coordinates when projecting points or lines," a second "Computer program for simplification of polygonal surfaces". Applications for these copyrights were filed on or about October 31, 2014. The copyrights were subsequently registered between January 16 and February 25, 2015.

118. Each of these applications and registrations relied on copied proprietary source code and algorithms belonging to Artec Group. These applications and registrations were filed and obtained without the knowledge or authorization of ARTEC or any other Artec Group entity.

119. On information and belief, KLIMOV and other DEFENDANTS have sought to use the source code and algorithms upon which these copyright applications were based to develop and manufacture Infringing Devices that compete with ARTEC and the Artec Group. KLIMOV has unfairly profited and been enriched through such sales, to the detriment of ARTEC and the Artec Group.

120. In addition, on December 22, 2014 KLIMOV incorporated a Russian limited liability company known as "Artek 3D." This was done without Artec Group authorization or knowledge, and represents an attempt to trade under the Artec name, or a close approximation thereof, in furtherance of his acts of unfair competition. KLIMOV has changed the name of the company in or around March 2015 after its existence was discovered by ARTEC.

4. *The Trade Secrets Misappropriated by Klimov Include Prototypes and Source Code for Building an Intercom Device.*

121. During KLIMOV's final years at ARTEC, he knew that ARTEC was secretly developing an intercom device that it planned to introduce to the market.

122. Former ARTEC Senior Programmer Nikolay Kulikov was one of the lead engineers in the intercom project. Kulikov was also involved in testing the product on the doors of Artec Group offices. The INDIVIDUAL DEFENDANTS succeeded in inducing Kulikov to provide them with access to and/or forward them confidential construction documents, schemes, and drawings, and source code using his access.

123. ARTEC has also retained contemporaneous records of discussions between Stebleva and other ARTEC employees regarding the intercom project.

1. ARTEC is informed and believes that the "Advanced Real-Time 3D Face Access Control" device featured on the ID-WISE website (<http://www.enter-face.com>, which is the forwarded web address of <http://www.id-wise.com>), which is accessible to the general public, is predicated in whole or in material part on ARTEC's protected trade secrets and Confidential Information.

5. *Through His New Company A-Star LLC, Klimov Entered into an Unlawful Distributor Relationship with Axon Business Systems LLC While Employed by Artec.*

124. On December 22, 2014, during his tenure as ARTEC's CEO, Director, and employee, KLIMOV founded "A-Star LLC," a company headquartered in Moscow. KLIMOV is listed as A-STAR's Chief Executive Officer and General Director.

125. On January 7, 2015, two weeks after A-STAR's incorporation, A-STAR and longtime ARTEC distribution partner AXON entered into "Product Supply Agreement #H-01/2014," which was executed by KLIMOV (in the capacity of "General Manager"). The agreement called for the sale of 112 ARTEC Devices to AXON for distribution in the United Arab Emirates. The contract was for the purchase by AXON of Broadway 3D

1 models BT, BM, and BMC.” These devices all belonged to the Artec Group and were
2 trademarks used in connection with Artec Group’s 3D facial recognition devices.

3 126. The agreement was for a grand total of \$819,273, which in aggregate was a
4 far lower price than Artec Group’s usual price for authentic ARTEC devices. The
5 agreement called for the delivery of the “first lot” to take place on February 28, 2015 (34
6 total items), the “second lot” on April 20, 2015 (45 total items), and the third lot on May
7 20, 2015 (33 total items). It was agreed that AXON would pay \$249,061 for the first lot,
8 \$328,360 for the second lot, and \$241,852 for the third lot. Each payment was to be made
9 to A-STAR via wire transfer to an account that was unrelated to any Artec Group entity.

10 127. On information and belief, AXON has made payment for the first batch of
11 the stolen products Funds in the amount of \$245,741.90 on or about February 28, 2015.
12 The funds were deposited in a Moscow bank account linked to A-STAR.

13 128. On information and belief, these products and/or the parts needed to
14 manufacture them were deliberately stolen by A-STAR and the INDIVIDUAL
15 DEFENDANTS, or some of them, from Artec Group warehouses and then shipped to
16 AXON.

17 129. On information and belief, subsequent shipments of stolen or infringing
18 products have been made to AXON by one or more companies operated by KLIMOV
19 and/or other INDIVIDUAL DEFENDANTS, and AXON has made additional payments
20 for such items.

21 130. Further, the Supply Agreement specified a web site located at
22 www.5dstar.com. The site contained an advertising for a new 3D Scanner. This web site
23 was not associated with Artec Group of Companies and demonstrates that A-STAR and its
24 shareholders who were at that time ARTEC’s employees, officers, and directors, were
25 already working on developing a competing 3D Scanner.

6. Defendants Converted Artec Physical Property, Misappropriated and/or Infringed Artec Confidential Information, and Misrepresented Inventory and Financial Information in Order to Fill the Axon Orders.

131. On information and belief, in order to make good on their commitment to deliver 112 Broadway devices, the INDIVIDUAL DEFENDANTS and A-STAR converted ARTEC's Trade Secrets and Confidential Information, as well as physical hardware, misappropriated and/or infringed on ARTEC's Confidential Information, and engaged in deceptive practices to source and manufacture additional devices, at ARTEC's expense and without ARTEC's knowledge. As described below, the INDIVIDUAL DEFENDANTS and A-STAR, or some of them, covered up this theft through a complex scheme, including the following:

a. As directed and authorized by KLIMOV, starting in August 2014, STEBLEVA and others obtained stolen parts with which to manufacture duplicate products by submitting fake warranty maintenance and repair claims for equipment previously supplied to legitimate Artec Group customers. This was within STEBLEVA's role as manager of the sales of Broadway 3D devices. STEBLEVA subsequently refused to provide Artec Group warranty maintenance and repair activity reports requested as part of an audit.

b. As directed and authorized by KLIMOV, ARTEC employee Andrey Streltsov, ostensibly in his capacity as technical support engineer whereby his responsibilities included management of the warranty repairs for the ARTEC GROUP, submitted false reports inflating the number of warranty repairs to camouflage the fact that many of the product "replacements" were actually for the purpose of manufacturing Infringing Devices relying on Confidential Information and Trade Secrets. Streltsov caused Artec Group manufactures to fill these orders, misrepresenting that the Artec Group was ordering these repairs.

c. As directed and authorized by KLIMOV, Poklad oversaw the assembly of Artec Group Devices and engaged ARTEC and other Artec Group employees

1 using Artec Group equipment. On information and belief, ARTEC and Artec Group
2 employees were not aware that the assembly was not officially sanctioned by the Artec
3 Group and that the purpose of their assembly was for sale to AXON for the personal
4 enrichment of KLIMOV and other INDIVIDUAL DEFENDANTS, as well as A-STAR,
5 and to the detriment of ARTEC and Artec Group.

6 d. Also as directed and authorized by KLIMOV, Poklad falsely “wrote
7 off” allegedly poor quality materials and parts as defective when those materials and parts
8 were in fact being used for the manufacture of infringing products.

9 e. As directed and authorized by KLIMOV, STEBLEVA conducted the
10 negotiations with AXON ostensibly in her capacity as an ARTEC or Artec Group
11 employee and knowingly withheld from ARTEC and Artec Group that she was actually
12 conducting negotiations on behalf of A-STAR, for A-STAR’s enrichment as well as the
13 personal enrichment of the INDIVIDUAL DEFENDANTS.

14 f. ARTEC Manager Irina Drozdova (as directed by KLIMOV and
15 STEBLEVA) covertly issued invitations ostensibly on behalf of the Artec Group with the
16 forged signature of Artyom Yukhin to members of AXON’s management team, as well as
17 the management of system integrator Red Solutions LLC to travel to Russia and meet with
18 KLIMOV and STEBLEVA in person and, on information and belief, other INDIVIDUAL
19 DEFENDANTS. Such invitations were required to receive a visa to travel to Russia.

20 g. As directed and authorized by KLIMOV, Chernetskaya processed the
21 stolen and/or Infringing Devices’ export documentation ostensibly in her official capacity
22 as an Artec Group employee, but knowingly and intentionally did so for the financial gain
23 of A-STAR, for which she was (and is believed to still be) a founder and shareholder. For
24 example, Chernetskaya prepared customs documentation for the export of the goods. The
25 transaction report related to this export represents that the goods to be supplied are Artec
26 Group products, specifically Broadway 3D products.

27 h. On February 9, 2015, KLIMOV entered into a service agreement with
28 a company called “Alta-Soft” in his capacity of “General Director” of A-STAR. On

1 information and belief, Alta-Soft's purpose is to provide customs clearance for the export
2 of the stolen or Infringing Devices. The subject of the specific agreement is to enable
3 communication and data transfer for electronic customs declaration. Chernetskaya is the
4 point of contact specified in the agreement, and the contact email is
5 "ekaterina.poplevina@gmail.com," which is the private email address of Ekaterina
6 Poplevina, another ex-ARTEC employee who ARTEC alleges was involved in the
7 conspiracy.

8 i. KLIMOV, KLIMOVA, STEBLEVA, and Chernetskaya thereafter
9 engaged in false and misleading financial accounting designed to obfuscate the fact that
10 Artec Group resources were being diverted to A-STAR for the financial gain of A-STAR
11 and the INDIVIDUAL DEFENDANTS and to the detriment of ARTEC and Artec Group.

12 j. On information and belief, when A-STAR delivered the Broadway
13 3D-branded ARTEC Devices to AXON in the United Arab Emirates, per KLIMOV's
14 instructions, some of ARTEC's employees replaced ARTEC's logo and references to
15 ARTEC with references to A-STAR and/or ID-WISE. Similarly, KLIMOV and others
16 misappropriated ARTEC's instruction and construction manuals for the Broadway devices
17 and Artec's new 3D face recognition intercom system and replaced references to ARTEC
18 with DEFENDANTS' own companies.

19 k. On information and belief, KLIMOV directed other INDIVIDUAL
20 DEFENDANTS to remove or deactivate the access control requirements of ARTEC's
21 Broadway 3D-branded devices sold to AXON.

22 7. Klimov Continued to Unlawfully Compete Against Axon Through a
23 Second Newly Formed Company, ID-Wise.

24 132. On January 22, 2015, a company named "ID-Wise, SIA" ("ID-WISE") was
25 incorporated in the Republic of Latvia. As of February 2, 2015, KLIMOV was identified
26 as the company's sole shareholder and thereafter as its sole Board Member.

1 133. However, even before January 22, KLIMOV and others of the
2 INDIVIDUAL DEFENDANTS were already using the name “ID-Wise” for purposes of
3 competing against ARTEC.

4 134. For example, from January 18 to 20, 2015, a safety and security exposition
5 known as the Intersec Expo (“Intersec”) took place in Dubai, United Arab Emirates.
6 Intersec advertises itself as a “must-attend trade fair for safety, security, fire protection and
7 homeland security.”

8 135. Unbeknownst to ARTEC, “Id-Wise” was listed as an exhibitor at Intersec
9 (see <http://www.intersecexpo.com/frankfurt/exhibitor/630/3500/id-wise.aspx> (last visited
10 July 23, 2015)). Chernetskaya was listed as the “Stand Manager.” On information and
11 belief, other rogue ARTEC employees were induced by DEFENDANTS to represent “Id-
12 Wise” at Intersec, including under the brand “ID-Face.”

13 136. On information and belief, KLIMOV was physically present at Intersec in
14 January 2015. For example, ARTEC is in possession of log-in information from KLIMOV
15 dating from January 18, 2015, during Intersec, with origination addresses from the United
16 Arab Emirates.

17 137. Thereafter, and continuing to the present, KLIMOV and other INDIVIDUAL
18 DEFENDANTS have sought to compete against ARTEC through ID-WISE’s devices,
19 including the Thor3D and EnterFace 3D Scanners, which ARTEC is informed and believes
20 are based on misappropriated trade secrets.

21 138. ID-WISE has also targeted the market for an intercom device of the type that
22 was being developed by ARTEC. As stated, the “Advanced Real-Time 3D Face Access
23 Control” device featured on the ID-WISE-operated website <http://www.enter-face.com> is
24 predicated in whole or in material part on ARTEC’s protected Trade Secrets and
25 Confidential Information.

1 8. *Axon Has Continued to Breach Its Continuing Obligations with Artec*
2 *Through Its Relationships with A-Star and ID-Wise.*

3 139. Through its distribution agreement with ARTEC, AXON agreed *inter alia* to
4 maintain ARTEC's Confidential Information, to advise ARTEC of any relationships with
5 competing companies, and only to use or sell ARTEC's marks during the period of their
6 Agreement. These provisions survived the term of the Agreement itself.

7 140. By entering into a separate agreement with A-STAR for the purchase of 112
8 Broadway devices, which AXON knew was an ARTEC brand, AXON materially breached
9 its continuing obligations to ARTEC. On information and belief, AXON was unjustly
10 enriched by purchasing the devices from A-STAR at artificially low prices, thus ensuring a
11 higher profit.

12 141. On May 3, 2015, the Artec Group, through counsel, informed AXON of this
13 breach and sought information related to its dealings with A-STAR, ID-WISE, KCCC Ltd.
14 (another illicit entity) and other entities related to KLIMOV, STEBLEVA, and other
15 former ARTEC employees. AXON refused to cooperate and continued to breach its
16 continuing obligations.

17 142. For example, until approximately June 13, 2015, AXON had continued to
18 link to ARTEC's Broadway 3D facial recognition system even though it had no active
19 agreement with ARTEC to advertise or sell Broadway 3D. On information and belief, the
20 Broadway 3D systems advertised on AXON's website had either been purloined by
21 DEFENDANTS from ARTEC's warehouses or were covertly built by DEFENDANTS
22 using misappropriated ARTEC parts and technology.

23 143. In addition, AXON has continued to communicate with employees of ID-
24 WISE, as set forth above, specifically with regard to 3D technology after being warned in
25 writing on several occasions by ARTEC that such employees have been infringing on
26 Artec Group's technology.

COUNT ONE

**Violation of Uniform Trade Secrets Act (Cal. Civil Code §§ 3426, et seq.)
(Against All INDIVIDUAL DEFENDANTS, A-STAR, and ID-WISE)**

144. ARTEC re-alleges and repeats the facts contained in Paragraphs 1 through 143 as though fully set forth herein.

145. ARTEC's technology, source code, algorithms, software, cost information, pricing structures and profit margins, pending patent applications, vendor, and manufacture, distributor, and customer lists and contact information, *inter alia*, are Trade Secrets as defined by the California Uniform Trade Secrets Act, Civil Code § 3426 et seq. ("the UTSA"). A detailed description of the Trade Secrets will be set forth under appropriate obligations of confidentiality pursuant to Civil Code 3426.5.

146. ARTEC's Trade Secrets derive actual or potential independent economic value because they are not generally known within the industry or the public at large, provide valuable competitive business advantage to ARTEC and are the result of significant research and development, know-how and monetary investment made by ARTEC and the ARTEC GROUP.

147. ARTEC has taken proper and reasonable efforts under the circumstances to insure that the Trade Secrets in its possession remain known only to ARTEC, the ARTEC GROUP, and to any other authorized person under written confidentiality agreements, which include the NCIA's between ARTEC and the INDIVIDUAL DEFENDANTS.

148. In addition, ARTEC has taken precautions to restrict access to its proprietary source code and algorithms to a handful of individuals with privileged access to its Redmine security interface. For example, even KLIMOV did not have access to Redmine and only obtained such access by inducing with Parkhalin, a Senior Engineer, to obtain a username and password on his behalf and to forward him ARTEC GROUP algorithms.

149. ARTEC is informed and believes, and on that basis alleges that DEFENDANTS, and each of them, have acquired ARTEC's Trade Secrets by improper means, including, without limitation, by theft and by breach of duty to maintain secrecy,

1 including by directing or inducing ARTEC employees to perform the thefts and breaches
2 on their behalf. Such acts constitute misappropriation under the UTSA.

3 150. ARTEC is informed and believes that DEFENDANTS, and each of them,
4 have misappropriated ARTEC's Trade Secrets and are presently using ARTEC's Trade
5 Secrets in connection with DEFENDANTS' own business activities and not on behalf of
6 ARTEC and without ARTEC's express or implied consent, authorization or authority.
7 Such acts constitute misappropriation under the UTSA.

8 151. ARTEC is informed and believes, and on that basis alleges that
9 DEFENDANTS, and each of them, have misappropriated, used, and have disclosed
10 ARTEC's Trade Secrets and/or Confidential Information to the other DEFENDANTS and
11 to third parties.

12 152. The conduct of DEFENDANTS, and each of them, has caused, and will
13 continue to cause, irreparable harm to ARTEC. Unless and until enjoined, each of the
14 DEFENDANTS will continue to receive the benefit of the Trade Secrets and/or
15 Confidential Information misappropriated from ARTEC, which trade secrets have aided
16 and will continue to aid DEFENDANTS, and each of them, to compete unfairly against
17 ARTEC. Moreover DEFENDANTS will continue to expand their business, solicit
18 potential customers of ARTEC and disclose ARTEC's Trade Secrets to third parties.

19 153. ARTEC is informed and believes and on that basis alleges that
20 DEFENDANTS have wrongfully acquired gains resulting from their conduct, and have
21 accepted such gains with the knowledge that the gains came from such wrongful conduct.
22 Thus, DEFENDANTS, and each of them, hold the wrongfully acquired gains in
23 constructive trust for the benefit of ARTEC, and ARTEC is entitled to an accounting of
24 those gains.

25 154. As a result of such misappropriation, ARTEC is entitled to actual damages.

26 155. As a further proximate result of the misappropriation of ARTEC's Trade
27 Secrets by Defendants, and each of them, ARTEC has been damaged in that
28 DEFENDANTS, and each of them, have and will continue to receive the benefits of the

1 Trade Secrets, which have aided and continue to aid DEFENDANTS, and each of them, to
 2 compete unfairly against ARTEC, and ARTEC will suffer the loss of revenues from sales
 3 of its products and associated services. ARTEC's competitive position, based upon its
 4 valuable knowledge, access to and use of its Trade Secrets, will be irretrievably lost.
 5 ARTEC is therefore entitled to injunctive relief to prevent DEFENDANTS from
 6 continuing to unfairly compete against ARTEC.

7 156. Further, DEFENDANTS, and each of them, will be unjustly enriched in an
 8 amount that is separate and distinct from ARTEC's damages.

9 157. ARTEC is informed and believes and on that basis alleges that in
 10 misappropriating ARTEC's Trade Secrets, and engaging in the wrongful misconduct
 11 alleged herein, DEFENDANTS acted willfully and are guilty of oppression, fraud and
 12 malice. ARTEC is therefore entitled to exemplary or punitive damages and attorneys' fees.

13 **COUNT TWO**

14 **Breach of Written Employment Contract**

15 **(Against All INDIVIDUAL DEFENDANTS)**

16 158. ARTEC re-alleges and repeats the facts contained in Paragraphs 1 through
 17 157 as though fully set forth herein.

18 159. As set forth herein, ARTEC entered into a Employment Agreements with
 19 each of the INDIVIDUAL DEFENDANTS, each of which bore its own unique sequential
 20 number. Each Agreement was to remain in effect "until terminated by either the Employer
 21 or the Employee." (Section 1.01.)

22 160. Section 2.01 ("General Duties") sets forth an expectation of loyalty and
 23 performance of duties within the scope of employment, such that the INDIVIDUAL
 24 DEFENDANTS, and each of them, were required to "perform such duties as are
 25 customarily performed by one holding such position in other businesses or enterprises of
 26 the same or similar nature as that engaged in by the Employer."

27 161. The Employment Agreements also prohibited the INDIVIDUAL
 28 DEFENDANTS, and each of them, from competing against ARTEC during their period of

1 employment. In relevant part, Section 8.01 (“No Conflicting Employment”) stated the
2 following:

3 Employee agree[s] that, during the term of his/her employment
4 with the Company, he/she will not engage in any other
5 employment, occupation, consulting or other business activity
6 **directly related to the business in which the Company is**
7 **now involved or becomes involved during the term of**
8 **his/her employment**, nor will he/she engage in any other
9 activities that **conflict with his/her obligations to the**
10 **Company.**

11 162. ARTEC has at all times performed the terms of the contract in the manner
12 specified by the contract.

13 163. In violation of their Employment Agreements, the INDIVIDUAL
14 DEFENDANTS, and each of them, engaged in other employment, occupation, consulting
15 or other business activity directly related to ARTEC’s business during their employment,
16 including misappropriating the Trade Secrets and Confidential Information in ARTEC’s
17 possession, effecting or facilitating the development, manufacture, marketing, and sale of
18 devices in ARTEC’s lawful possession containing the proprietary 3D facial recognition
19 technology of ARTEC GROUP, and engaging other activities conflicting with such
20 employee’s obligations to ARTEC.

21 164. Through such conduct, the INDIVIDUAL DEFENDANTS, and each of
22 them, breached their obligations to the company by engaging in business “directly related
23 to” the business of ARTEC, and which otherwise conflicted with their obligations to
24 ARTEC.

25 165. Moreover, such conduct did not constitute “duties as are customarily
26 performed by one holding such position in other businesses or enterprises of the same or
27 similar nature as that engaged in by the Employer.”

28 166. ARTEC has been, and continues to be, irreparably harmed by the breaches
described herein.

167. ARTEC’s damage was, and is, proximately caused by the breaches described
herein.

168. As a result of INDIVIDUAL DEFENDANTS' breaches, ARTEC is entitled to compensatory damages pursuant to Civil Code § 3300 in an amount sufficient to compensate ARTEC for all detriment proximately caused by the breaches of the INDIVIDUAL DEFENDANTS. ARTEC is further entitled to lost profits, including future lost profits, caused by the breaches of the INDIVIDUAL DEFENDANTS. *Sanchez-Corea v. Bank of America*, 38 Cal.3d 892, 907-08 (1985); *Fisher v. Hampton*, 44 Cal.App.3d 741, 747 (1975).

169. In the alternative, ARTEC is entitled to restitution in an amount to compensate ARTEC for the amount by which the INDIVIDUAL DEFENDANTS, and all of them, have been unjustly enriched through their actions. *Lectrodryer v. SeoulBank*, 77 Cal.App.4th 723, 726 (2000).

170. ARTEC is also entitled to mandatory prevailing party attorney's fees and costs as provided for in Section 7.01 of the Employment Agreement, which provides that "[i]f any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled."

COUNT THREE

Breach of Noncompetition, Confidentiality, Inventions Agreement

(Against the INDIVIDUAL DEFENDANTS)

171. ARTEC re-alleges and repeats the facts contained in Paragraphs 1 through 169 as though fully set forth herein.

172. As set forth herein, the INDIVIDUAL DEFENDANTS, and each of them, were signatories to a Noncompetition, Confidentiality, Inventions Agreement ("NCIA") during their period of employment. Each NCIA was entered into prior to the activities upon which this Complaint is based.

173. During their employment, and continuing after their separation from ARTEC and into the present, the INDIVIDUAL DEFENDANTS materially breached their

1 obligations to ARTEC as set forth in the NCIA with reference to Confidential Information
2 and Inventions, as defined therein (see footnote 14 *supra*), including as follows:

3 a. In violation of Section 2.1 of the NCIA, the INDIVIDUAL
4 DEFENDANTS, and on information and belief each of them, appropriated, attempted to
5 appropriate, and/or disclosed ARTEC's Confidential Information to third parties.

6 b. In violation of Section 2.2 of the NCIA, the INDIVIDUAL
7 DEFENDANTS, and on information and belief each of them, failed to hold in confidence
8 all Confidential Information received, acquired, produced or developed by them in the
9 course of their employment with ARTEC, both during and after their employment with
10 ARTEC terminated.

11 c. Also in violation of Section 2.2 of the NCIA, the INDIVIDUAL
12 DEFENDANTS, and on information and belief each of them, used, disclosed, reproduced
13 or disposed of Confidential Information in a manner not required by law or done in
14 connection with the performance of his or her duties and responsibilities to ARTEC, both
15 during and after his or her employment with ARTEC terminated.

16 d. In violation of Section 2.6 of the NCIA, the INDIVIDUAL
17 DEFENDANTS, and on information and belief each of them, at the time of leaving the
18 employ of ARTEC, failed to deliver to ARTEC devices, records, data, notes, reports,
19 proposals, lists, correspondence, specifications, drawings blueprints, sketches, materials,
20 equipment, other documents and/or property, and/or reproductions of the same belonging
21 to ARTEC or its successors or assigns, including Artec Europe and Artec Ventures.
22 Furthermore, on information and belief, the INDIVIDUAL DEFENDANTS, and each of
23 them, kept such items in their possession, recreated, and/or delivered them to third parties
24 without the consent or authorization of ARTEC.

25 e. In violation of Section 4.1 of the NCIA, the INDIVIDUAL
26 DEFENDANTS, and on information and belief each of them, performed work related to
27 Inventions but failed to maintain accurate records related to such Inventions, to disclose
28 relevant records to ARTEC, or to keep ARTEC informed of Inventions made or conceived

1 by them, as the result of any work for or at the request of ARTEC, or which related to
2 activities, products, services or processes of ARTEC.

3 f. In violation of Section 4.4 of the NCIA, the INDIVIDUAL
4 DEFENDANTS, and on information and belief each of them, failed to secure ARTEC's
5 rights in the Inventions or other intellectual property rights relating thereto, and further
6 failed to disclose to ARTEC all pertinent information and data with respect thereto.

7 g. In violation of Section 5.1 of the NCIA, the INDIVIDUAL
8 DEFENDANTS, and on information and belief each of them, while employed by ARTEC
9 and/or within twelve months after their employment ended, directly or indirectly attempted
10 to hire employees of ARTEC, assisted others in the hiring of such employees, encouraged
11 employees to terminate their relationship with ARTEC, and/or solicited or encouraged
12 customers and/or vendors of ARTEC to terminate its relationship with ARTEC.

13 h. In violation of Section 6.1 of the NCIA, the INDIVIDUAL
14 DEFENDANTS, and on information and belief each of them, failed to surrender to
15 ARTEC upon termination of their employment, all written or otherwise tangible
16 documentation, in whatever form, representing or embodying Confidential Information or
17 Inventions or copies thereof, whether or not prepared by such employee or another, in that
18 employee's possession or control.

19 i. In further violation of the terms of the NCIA, on information and
20 belief, each INDIVIDUAL DEFENDANT who had entered into an NCIA misappropriated
21 and/or disclosed Trade Secrets and Confidential Information to third parties, including the
22 other DEFENDANTS herein.

23 174. ARTEC has been, and continues to be, irreparably harmed by the breaches
24 described herein.

25 175. ARTEC's damage was, and is, proximately caused by the breaches described
26 herein.

27 176. As a result of the breaches herein alleged, ARTEC is entitled to
28 compensatory damages pursuant to Civil Code § 3300 in an amount sufficient to

1 compensate ARTEC for all detriment proximately caused by the breaches of the
 2 INDIVIDUAL DEFENDANTS. ARTEC is further entitled to lost profits, including future
 3 lost profits, caused by the breaches of the INDIVIDUAL DEFENDANTS.¹⁹

4 177. In the alternative, ARTEC is entitled to restitution in an amount to
 5 compensate ARTEC for the amount by which the INDIVIDUAL DEFENDANTS have
 6 been unjustly enriched through their actions. *Lectrodryer v. SeoulBank* (2000) 77
 7 Cal.App.4th 723, 726.

8 178. Moreover, ARTEC is entitled to attorney's fees and costs as provided for in
 9 Section 8.01 of the NCIA.

10 **COUNT FOUR**

11 **Breach of Written Distributor Agreement**

12 **(Against AXON)**

13 179. ARTEC re-alleges and incorporates by reference the allegations in
 14 paragraphs 1 through 178 above as if fully set forth herein.

15 180. On August 8, 2012, ARTEC entered into a "Non-Exclusive Distribution
 16 Agreement" with AXON. The Axon Agreement granted AXON the right to sell ARTEC's
 17 facial recognition devices and 3D scanners, including its "Broadway 3D" lines, to
 18 purchasers in the UAE. In exchange, AXON agreed to protect ARTEC's intellectual
 19 property and confidential information obtained during the course of the parties'
 20 relationship.

21 181. Although the term of the Axon Agreement was for one year (subject to
 22 renewal on agreement of the parties), the parties also agreed that certain provisions would
 23 survive the termination of the Axon Agreement, particularly in respect to trade secrets and
 24 confidential information, including Section 2.9, 2.11, 2.12, and 7.5:

- 25 • Section 2.9 provided in relevant part that "Distributor shall keep
 26 ARTEC informed of Distributor's current or future sales of equipment

27
 28 ¹⁹ *Sanchez-Corea v. Bank of America*, 38 Cal.3d 892, 907-08 (1985); *Fisher v. Hampton*, 44 Cal. App. 3d 741, 747 (1975).

1 or products similar to or competitive with the Products” and that “[i]n
 2 the event that Distributor begins sales of equipment or products similar
 3 or competitive with the Products, Distributor shall inform ARTEC of
 4 that fact not later than one month after the commencement of such
 5 sales.”²⁰

- 6 • Section 2.11 provided in relevant part that “Distributor shall maintain in
 7 confidence and not disclose to any third party any Confidential
 8 Information. Distributor shall make no use of Confidential Information
 9 except to further the business interests of the parties as contemplated by
 10 this Agreement. Distributor shall not use the Confidential Information
 11 to the detriment of ARTEC under any circumstances.”²¹
- 12 • Section 2.12 provided in relevant part that “Distributor shall maintain in
 13 confidence and not disclose to any third party any Confidential
 14 Information. Distributor shall make no use of Confidential Information
 15 except to further the business interests of the parties as contemplated by
 16 this Agreement. Distributor shall not use the Confidential Information
 17 to the detriment of ARTEC under any circumstances. . . . Distributor's
 18 obligations with respect to the disclosure and use of Confidential
 19 Information shall survive the termination or expiration of this
 20 Agreement.”
- 21 • Section 7.5 provided in relevant part that “Upon termination of this
 22 Agreement, Distributor shall immediately cease all use of the ARTEC
 23 Marks.”

24 182. By entering into the Product Service Agreement with A-STAR on January 7,
 25 2015, for the unauthorized sale of 112 ARTEC’s Broadway 3D devices, or infringing
 26 counterfeits or reproductions thereof, for \$819,273, and by continuing to transact for 3D
 27 scanners, facial recognition devices and/or intercom devices with A-STAR and, on
 28 information and belief, ID-WISE, AXON has materially breached its continuing
 obligations to ARTEC as set forth in the Axon Agreement, including as follows:

- In violation of its continuing obligations under Section 2.9, AXON distributed equipment or products similar to or competitive with the

²⁰ Pursuant to Section 7.2, the obligations in Section 2.9 “shall survive the termination of this Agreement.”

²¹ Pursuant to Section 8.2, “The representations, warranties and covenants set forth in Section[] . . . 2.11 . . . shall survive the termination of this Agreement.”

1 ARTEC products in the United Arab Emirates without ARTEC's prior
2 written consent. Also in violation of Section 2.9, AXON failed to keep
3 ARTEC informed of AXON's current or future sales of equipment or
4 products similar to or competitive with ARTEC's products.

- 5 • In violation of its continuing obligations under Section 2.11, AXON
6 failed to notify ARTEC promptly of any and all infringements,
7 limitations, simulations, unlawful uses, or misuses of ARTEC marks,
8 patents, and other intellectual property rights.
- 9 • In violation of its continuing obligations under Section 2.12, AXON
10 failed to maintain in confidence, and instead disclosed, Confidential
11 Information as defined in Section 1.1 to some or all of the
12 INDIVIDUAL DEFENDANTS, A-STAR, and ID-WISE. In further
13 violation of Section 2.12, AXON used the Confidential Information to
14 the detriment of ARTEC.
- 15 • In violation of its continuing obligations under Section 7.5, following
16 termination of the Axon Agreement, AXON failed to cease all use of
17 the ARTEC marks.

18 183. AXON has continued to breach the terms of the Axon Agreement and to
19 conspire with other DEFENDANTS to unlawfully compete against ARTEC even after
20 being timely served with cease and desist letters. AXON has further failed or refused to
21 assist ARTEC in its investigation into wrongdoing by other DEFENDANTS with whom
22 AXON conspired, to ARTEC's detriment.

23 184. ARTEC has been, and continues to be, irreparably harmed by the breaches
24 described herein.

25 185. ARTEC's damage was, and is, proximately caused by the breaches described
26 herein.

27 186. As a result of the breaches herein alleged, ARTEC is entitled to
28 compensatory damages pursuant to Civil Code § 3300 in an amount sufficient to
compensate ARTEC for all detriment proximately caused by the breaches of the AXON.
ARTEC is further entitled to lost profits, including future lost profits, caused by the
breaches of AXON.

187. In the alternative, ARTEC is entitled to restitution in an amount to compensate ARTEC for the amount by which AXON has been unjustly enriched through its actions.

COUNT FIVE

Unjust Enrichment

(Against All DEFENDANTS)

188. ARTEC re-alleges and incorporates by reference the allegations in paragraphs 1 through 187 above as if fully set forth herein.

189. ARTEC is informed and believes and on that basis alleges that as a proximate and legal result of DEFENDANTS' wrongful and/or unlawful conduct as alleged in this Complaint, Defendants have been unjustly enriched, including without limitation by unjustly reaping and retaining the benefits from unauthorized use of ARTEC's Trade Secrets and Confidential Information. For example, DEFENDANTS, and each of them, wrongfully obtained a detailed knowledge of protected source code, algorithms, software, and programs upon which ARTEC GROUP products are based and which were in ARTEC's lawful possession at the time of their misappropriation; a detailed knowledge of vendors and customers of ARTEC and affiliated companies, and individuals working at those vendors and customers; detailed financial analyses of ARTEC's business model and pricing structures; knowledge of production facilities where ARTEC's products are manufactured; knowledge of the strengths and limitations of the ARTEC's products; knowledge of ARTEC's advertising and marketing relationships, contracts, and spending; and other information and know-how that could not have been obtained by DEFENDANTS but for their association with ARTEC.

190. DEFENDANTS have obtained access to this information at little or no cost and have thereby been unjustly enriched to ARTEC's detriment.

191. ARTEC is entitled to recover from DEFENDANTS, and each of them, the gains, profits, advantages and unjust enrichment that they have obtained as a result of their wrongful and/or unlawful acts.

192. As a result of the foregoing unjust enrichment, DEFENDANTS have a duty to ARTEC to account for and make restitution to ARTEC of all monies, property, assets, and all of the benefits received or to be received, directly or indirectly, by such defendants as a result of the retention, use, investment and reinvestment thereof.

COUNT SIX

Breach of the Implied Covenant of Good Faith and Fair Dealing

(Against INDIVIDUAL DEFENDANTS)

193. ARTEC re-alleges and repeats the facts contained in Paragraphs 1 through 192 as though fully set forth herein.

194. The Employment Agreements and NCIAAs entered into between ARTEC, on the one hand, and each the INDIVIDUAL DEFENDANTS, on the other hand, were valid contracts supported by valuable consideration. ARTEC fully performed its obligations thereunder or has been excused therefrom.

195. Implied in ARTEC's contracts with the INDIVIDUAL DEFENDANTS, and each of them, was a covenant that the parties would deal with each other in good faith and would not engage in any conduct to deprive the other of the benefit of the agreement.

196. The INDIVIDUAL DEFENDANTS, and each of them, failed to perform their obligations under the Employment Agreement and/or the NCIA in good faith by knowingly, intentionally, and in bad faith concealing from ARTEC the existence of projects on which they were working while in ARTEC's employ through which they intended to and did directly compete against ARTEC, and/or assisted other DEFENDANTS in directly competing against ARTEC, based on misappropriated or stolen Trade Secrets, Confidential Information, and proprietary hardware or components thereof.

197. As a direct and proximate result of the INDIVIDUAL DEFENDANTS', and each of their, knowing, intentional, and in bad faith breach of the parties' implied covenant of good faith and fair dealing, ARTEC has sustained and will continue to sustain damages. The precise nature and amount of such accrued and continuing damages is not known by ARTEC and cannot be ascertained by it at the present time, but such damages are, on

1 information and belief, substantial and in excess of the jurisdictional minimum of this
2 Court.

3 **COUNT SEVEN**

4 **Breach of the Implied Covenant of Good Faith and Fair Dealing** 5 **(Against AXON)**

6 198. ARTEC re-alleges and repeats the facts contained in Paragraphs 1 through
7 197 as though fully set forth herein.

8 199. The Non-Exclusive Distribution Agreement entered into between ARTEC,
9 on the one hand, AXON, on the other hand (the “Axon Agreement”), was a valid contract
10 supported by valuable consideration. ARTEC fully performed its obligations thereunder or
11 has been excused therefrom.

12 200. Implied in ARTEC’s contracts with the AXON was a covenant that the
13 parties would deal with each other in good faith and would not engage in any conduct to
14 deprive the other of the benefit of the agreement.

15 201. AXON failed to perform its obligations under the Axon Agreement in good
16 faith by knowingly, intentionally, and in bad faith engaging in the conduct set forth herein.

17 202. As a direct and proximate result of AXON’s knowing, intentional, and in bad
18 faith breach of the parties’ implied covenant of good faith and fair dealing, ARTEC has
19 sustained and will continue to sustain damages. The precise nature and amount of such
20 accrued and continuing damages is not known by ARTEC and cannot be ascertained by it
21 at the present time, but such damages are, on information and belief, substantial and in
22 excess of the jurisdictional minimum of this Court.

23 **COUNT EIGHT**

24 **Tortious Interference with Contract**

25 **(Against All INDIVIDUAL DEFENDANTS, A-STAR, and ID-WISE)**

26 203. ARTEC re-alleges and repeats the facts contained in Paragraphs 1 through
27 202 as though fully set forth herein.

1 204. ARTEC is informed and believes, and on that basis alleges, that KLIMOV,
2 KLIMOVA, STEBLEVA, A-STAR, and ID-WISE, and each of them, acting with full
3 knowledge of the contractual obligations of each of ARTEC's employees, offered
4 inducement to various other ARTEC employees, and otherwise engaged in wrongful
5 conduct calculated to interfere with ARTEC's contracts with its employees.

6 205. On information and belief, those employees include other INDIVIDUAL
7 DEFENDANTS, as well as other ARTEC employees who have subsequently been induced
8 to work on behalf of A-STAR, ID-WISE or related enterprises.

9 206. Through such inducements and wrongful conduct, the INDIVIDUAL
10 DEFENDANTS, A-STAR, and ID-WISE, and each of them, knowingly and willfully
11 induced ARTEC's employees to breach their contract with ARTEC or otherwise
12 intentionally interfered with ARTEC's contracts with its employees.

13 207. ARTEC is informed and believes, and on that basis alleges, that, but for the
14 wrongful conduct of the INDIVIDUAL DEFENDANTS, A-STAR, and ID-WISE, and
15 each of them, most if not all of its "rogue" employees would not have breached their
16 contracts with ARTEC.

17 208. By their wrongful conduct, the INDIVIDUAL DEFENDANTS, A-STAR,
18 and ID-WISE, and each of them, intended to and have caused other ARTEC employees to
19 breach and repudiate their contracts with ARTEC and have attempted to gain an unfair
20 competitive advantage against ARTEC by, among other things, obtaining Confidential
21 Information from its employees, designing, manufacturing and selling devices that rely on
22 the Confidential Information and Trade Secrets of ARTEC and affiliated entities, and
23 conspiring with them to form and staff competing companies.

24 209. Through such actions, the INDIVIDUAL DEFENDANTS, A-STAR, and
25 ID-WISE, and each of them, have taken the profits resulting from these unauthorized
26 projects and ventures for their own benefit and to ARTEC's financial detriment.

1 215. ARTEC re-alleges and repeats the facts contained in Paragraphs 1 through
2 214 as though fully set forth herein.

3 216. During their employment with ARTEC, KLIMOV was engaged in a
4 confidential, contractual, and agency relationship with ARTEC by virtue of his position as
5 the company's CEO and a member of the Board of Directors.

6 217. Such agency relationship imposed a fiduciary duty to disclose to ARTEC
7 any unlawful actions or other misconduct that were in dereliction of KLIMOV's work
8 responsibilities to ARTEC or otherwise damaged and/or compromised ARTEC's business.
9 This duty was part of KLIMOV's duty of undivided loyalty to and fiduciary relationship
10 with ARTEC arising from the nature of his relationship with ARTEC and ARTEC repose
11 of trust and confidence in him.

12 218. KLIMOV intended to induce ARTEC's reliance on his conduct as being
13 lawful and proper, and ARTEC reasonably relied on KLIMOV's conduct, believing his
14 efforts to be loyal and true.

15 219. As alleged hereinabove, KLIMOV knowingly misappropriated ARTEC's
16 Trade Secrets and Confidential Information, converted ARTEC's products and parts,
17 created new companies that competed against ARTEC and entered into relationships with
18 ARTEC's prior distributor, caused his new companies to appear as exhibitors of 3D
19 technology during at least one international conference, and solicited ARTEC's employees
20 to aid and abet him in these actions and subsequently to work for his companies.

21 220. ARTEC had no knowledge that KLIMOV had engaged in any of these
22 actions.

23 221. At no point in time did KLIMOV advise ARTEC or any of its loyal officers
24 or employees about the conduct alleged herein.

25 222. Until February 12, 2015, ARTEC had no knowledge that KLIMOV had
26 engaged in any of the conduct alleged herein. Upon discovery of such conduct, ARTEC
27 immediately acted to remove KLIMOV in all of his official capacities and sever the
28 employment relationship.

1 223. Had ARTEC known of the true facts related to KLIMOV's attempts to
2 compete against ARTEC, misappropriate its property, and poach its employees, it never
3 would have permitted such actions. KLIMOV therefore engaged in a fraudulent
4 concealment in failing to inform ARTEC of this conduct.

5 224. KLIMOV's concealment was in dereliction of his fiduciary duty to ARTEC
6 requiring him to refrain from acting against the interests of ARTEC.

7 225. These failures to disclose by KLIMOV to ARTEC were material because
8 ARTEC, had it had knowledge, would not have allowed AXON to act as its nominal
9 distributor, nor KLIMOV to divert sales away from ARTEC or poach its employees, nor
10 KLIMOV to incorporate competing entities while ostensibly acting as a CEO and Director
11 of ARTEC, nor to represent his new companies and not ARTEC in the field of 3D
12 technology at international conferences.

13 226. KLIMOV made these concealments with knowledge of the material
14 omissions and with intent to deceive ARTEC into relying on the material omissions.
15 Among other things, KLIMOV never advised ARTEC of the creation or existence of the
16 Product Supply Agreement with AXON. Further, Skype chats, Google Hangout sessions,
17 and email correspondences between KLIMOV and various of the INDIVIDUAL
18 DEFENDANTS demonstrate that KLIMOV intended to engage in this conduct without
19 ARTEC's knowledge and to induce ARTEC to believe that he was at all times acting in the
20 best interest of the company.

21 227. ARTEC reasonably relied on KLIMOV's material omission of the wrongful
22 actions alleged herein, to its detriment. As a result, ARTEC had potential sales diverted
23 from it, had its devices and parts misappropriated from warehouses or manufactured under
24 false pretenses at additional costs, lost the value of KLIMOV's and the other
25 INDIVIDUAL DEFENDANTS' services and salary, and has had its goodwill and
26 reputation damaged.

27 228. KLIMOV's fraudulent concealment entitles ARTEC to recovery of all
28 damages suffered as a result of the fraud, including disgorgement of KLIMOV's ill-gotten

1 gains, ARTEC's lost sales and profits, recovery of the salaries paid to employees who
 2 KLIMOV caused to secretly aid and abet his acts of competition, the value of any devices
 3 or parts misappropriated by KLIMOV, the value of any Trade Secrets or Confidential
 4 Information taken by KLIMOV or at his direction, and the value of the goodwill and loss
 5 of reputation incurred as a result of his actions.

6 229. KLIMOV's concealment was tortious, malicious, outrageous, oppressive,
 7 fraudulent, made in bad faith, and in conscious disregard of ARTEC's rights. Accordingly,
 8 in addition to general and compensatory damages, ARTEC should be awarded exemplary
 9 and punitive damages sufficient to punish and make an example of KLIMOV.

10 **COUNT ELEVEN**

11 **Breach of Fiduciary Duty**

12 **(Against All INDIVIDUAL DEFENDANTS)**

13 230. ARTEC re-alleges and repeats the facts contained in Paragraphs 1 through
 14 229 as though fully set forth herein.

15 231. As the Chief Executive Officer and Director of ARTEC, KLIMOV owed
 16 ARTEC fiduciary duties of honesty and undivided loyalty. As an officer and director of
 17 ARTEC, KLIMOV also owed heightened duties of non-disclosure and candor. KLIMOV
 18 was well aware that he was in a position that required great trust, required that he always
 19 act in the best interests of ARTEC, and that his position with ARTEC made him
 20 accountable to ARTEC as a fiduciary.

21 232. As the de facto Chief Financial Officer of ARTEC, KLIMOVA owed
 22 ARTEC fiduciary duties of honesty and undivided loyalty. As an officer and executive of
 23 ARTEC, KLIMOVA also owed heightened duties of non-disclosure and candor.
 24 KLIMOVA was well aware that she was in a position that required great trust, required
 25 that she always act in the best interests of ARTEC, and that her position with ARTEC
 26 made her accountable to ARTEC as a fiduciary.

27 233. As the Vice President of Business Development of ARTEC, STEBLEVA
 28 owed ARTEC fiduciary duties of honesty and undivided loyalty. As an executive of

1 ARTEC, STEBLEVA also owed heightened duties of non-disclosure and candor.

2 STEBLEVA was well aware that she was in a position that required great trust, required
3 that she always act in the best interests of ARTEC, and that her position with ARTEC
4 made her accountable to ARTEC as a fiduciary.

5 234. The INDIVIDUAL DEFENDANTS, and each of them, by virtue of their
6 positions, knew the contents of ARTEC's agreements with its employees, and the
7 importance of the policies set forth therein.

8 235. The INDIVIDUAL DEFENDANTS, and each of them, breached their
9 fiduciary duties to ARTEC through the actions described herein, including but not limited
10 to the following:

11 a. Secretly competing against ARTEC while they themselves were
12 ARTEC's fiduciaries;

13 b. Conspiring with other ARTEC employees to compete against
14 ARTEC;

15 c. Inducing ARTEC's employees to breach their contractual
16 relationships with ARTEC and their duties of loyalty;

17 d. Wilfully and intentionally inducing or causing such employees to
18 materially breach their agreements with ARTEC in violation of their known duties to
19 ARTEC;

20 e. Misappropriating and covertly selling ARTEC GROUP Devices,
21 Confidential Information and Trade Secrets that were in the lawful possession of ARTEC;
22 and

23 f. Manufacturing and selling products based on source code, algorithms,
24 and other Trade Secrets and Confidential Information belonging to the ARTEC GROUP.

25 236. The INDIVIDUAL DEFENDANTS, and each of them, further breached
26 their duty of candor to ARTEC by not disclosing to ARTEC their acts of unfair
27 competition and interference with contract, *inter alia*.

28

1 237. The INDIVIDUAL DEFENDANTS, and each of them, further breached
2 their fiduciary duties to ARTEC by failing to disclose to ARTEC their and other
3 employees' activities in misappropriating Confidential Information to their own personal
4 electronic storage devices for the purpose of competing against ARTEC and the ARTEC
5 GROUP.

6 238. On information and belief, the INDIVIDUAL DEFENDANTS, and each of
7 them, continued their employment with ARTEC and to hold themselves out as ARTEC's
8 fiduciaries and trusted agents for at least six months after their initial actions taken against
9 the interests of the Company, without disclosing their activities that were not authorized by
10 ARTEC.

11 239. The INDIVIDUAL DEFENDANTS, and each of them, committed the acts
12 alleged herein maliciously, fraudulently and oppressively, with a wrongful intention of
13 injury against ARTEC with improper motives amounting to malice and a conscious
14 disregard of ARTEC's rights.

15 240. By direct and proximate virtue of the INDIVIDUAL DEFENDANTS', and
16 each of their, breach of their fiduciary duties owed to ARTEC, ARTEC has suffered
17 monetary damages and irreparable injury in an amount according to proof at trial.

18 241. As a direct and proximate result of the INDIVIDUAL DEFENDANTS', and
19 each of their, breaches, ARTEC is further entitled to an injunction restraining and
20 enjoining the INDIVIDUAL DEFENDANTS, and each of them, and those in active
21 concert with them and acting on their behalf from (i) using, disclosing or converting in any
22 manner or in any form any of ARTEC's Confidential Information; and (ii) hiding or
23 destroying any documents or other evidence in any way concerning the allegations in this
24 Complaint.

25 242. ARTEC is further entitled to an injunction compelling the INDIVIDUAL
26 DEFENDANTS, and each of them, and those in active concert with them and acting on
27 their behalf to (i) submit to forensic analysis any and all computer systems and electronic
28 storage devices, including personal computers, personal email accounts, Skype accounts,

1 Google Hangout sessions, handheld devices and/or USB or other drives, to determine the
 2 extent to which KLIMOV and KLIMOVA possess or have possessed any of ARTEC's
 3 Confidential Information in any form; (ii) return to ARTEC any property or information
 4 belonging to ARTEC; and (iii) destroy any and all copies of such information in their
 5 possession.

6 243. ARTEC is further entitled to disgorgement of the INDIVIDUAL
 7 DEFENDANTS, and each of their, salary and any additional compensation during the
 8 period in which they were in breach of their fiduciary duties, which on information and
 9 belief started in August 2014 at the latest; invalidation of the transfer or sale of KLIMOV's
 10 shares of ARTEC stock to a third party; disgorgement of KLIMOV's shares of ARTEC
 11 stock; compensatory damages in an amount to be decided at trial; and punitive damages.

12 **COUNT TWELVE**

13 **Breach of Duty of Loyalty (Labor Code §§ 2860, 2863)**

14 **(Against All INDIVIDUAL DEFENDANTS)**

15 244. ARTEC re-alleges and repeats the facts contained in Paragraphs 1 through
 16 243 as though fully set forth herein.

17 245. At all relevant times during their employment, the INDIVIDUAL
 18 DEFENDANTS, and each of them, owed ARTEC a duty of loyalty, including acting for
 19 ARTEC's benefit, protecting ARTEC's interests, preserving its relationships with
 20 distributors and customers, and subordinating his personal interests to those of ARTEC.

21 246. Labor Code section 2860 provides that everything an employee acquires by
 22 virtue of his or her employment belongs to the employer, whether acquired during or after
 23 the expiration of the term of his or her employment.

24 247. Labor Code section 2863 provides that an employee who has any business to
 25 transact on his own account that is similar to that entrusted to the employee by his
 26 employer must give preference to the business of the employer.

1 them, violated their confidential relationship with ARTEC by misappropriating ARTEC's
2 Confidential Information and Trade Secrets and using it to develop and manufacture
3 competing products via the newly formed corporations A-STAR and ID-WISE, including
4 while they were physically continuing to work at ARTEC and for all intents and purposes
5 holding themselves out as loyal employees.

6 263. The INDIVIDUAL DEFENDANTS, A-STAR, and ID-WISE, and each of
7 them, have continued to use ARTEC's Confidential Information and Trade Secrets in a
8 manner designed to harm ARTEC's business relationships, reduce ARTEC's sales, and
9 ultimately lower the value of ARTEC and of the stock held by ARTEC's officers and
10 directors.

11 264. In addition, A-STAR and AXON have been unjustly enriched by entering
12 into an agreement through which A-STAR sold and shipped infringing products to AXON
13 without authorization from ARTEC, for which AXON had agreed to pay, and on
14 information and belief did pay, approximately \$819,273 for 112 proprietary Broadway 3D
15 devices. AXON breached its ongoing commitments to ARTEC by entering into this
16 Agreement. On information and belief, AXON sold these products to end-users and
17 profited by such sales.

18 265. The actions taken to compete against ARTEC and to profit from the
19 unauthorized sale of ARTEC Devices and devices based on Trade Secrets and Confidential
20 Information by DEFENDANTS, and each of them, is wrongful.

21 266. DEFENDANTS therefore hold such Confidential Information as an
22 involuntary or constructive trustee for their own benefit or for the benefit of third parties
23 with which they have become affiliated.

24 COUNT FIFTEEN

25 False Advertising (Business & Professions Code § 17500)

26 (Against A-STAR, ID-WISE, and KLIMOV)

27 267. ARTEC re-alleges and incorporates by reference the allegations in
28 paragraphs 1 through 266 above as if fully set forth herein.

1 268. Section 17500 of the California Business and Professions Code (“Section
2 17500”) renders it unlawful for any person, firm, corporation or association, or any
3 employee thereof to with intent directly or indirectly “make or disseminate or cause to be
4 made or disseminated before the public” in California or any other state “in any newspaper
5 or other publication, or any advertising device, . . . including over the Internet, any
6 statement . . . which is untrue or misleading, and which is known, or which by the exercise
7 of reasonable care should be known, to be untrue or misleading”

8 269. As set forth herein, A-STAR and ID-WISE, and each of them, have violated
9 and are violating Section 17500.

10 270. For example, A-STAR has falsely designated itself as the source of origin of
11 ARTEC’s Broadway 3D line of products, as well as other technology and proprietary
12 software and hardware developed by ARTEC.

13 271. For example, ID-WISE has made false claims via its website [http://www.id-](http://www.id-wise.com)
14 [wise.com](http://www.id-wise.com) (which forwards to a website <http://www.enter-face.com> which is said to be
15 “Powered by ID-Wise”). For example, the webpage [http://www.enter-face.com/powered-](http://www.enter-face.com/powered-by-id-wise/)
16 [by-id-wise/](http://www.enter-face.com/powered-by-id-wise/) states “Andrey Klimov, the leader of ID-WISE, . . . has been developing 3D
17 sensing technology since 1999 and has patented numerous 3D solutions.” This statement
18 is untrue or misleading, as any and all “3D sensing technology” was developed by and
19 through ARTEC and/or other Artec Group companies, and any patents for 3D solutions
20 were patented by ARTEC or other Artec Group companies.

21 272. Similarly, the statement “We develop original, proprietary 3D sensing
22 methods and base all products on that technology” is untrue or misleading because, on
23 information and belief, any and all products and technology of ID-WISE are based on the
24 Trade Secrets and Confidential Information belonging to ARTEC or Artec Group.

25 273. In addition, on information and belief, A-STAR and ID-WISE, by and
26 through KLIMOV and others, made untrue or misleading statements to AXON and other
27 ARTEC business partners that A-STAR was connected with or one and the same with
28

1 ARTEC, that the Broadway 3D line of products was the property of A-STAR, and that A-
2 STAR and its representatives were authorized to sell the Broadway 3D line of products.

3 274. Upon information and belief, these and other statements in A-STAR and ID-
4 WISE's websites, as well as printed materials disseminated to the public, contain false and
5 misleading representations and statements of fact concerning the origin of ID-WISE and
6 A-STAR technology and are in violation of Section 17500.

7 275. ARTEC is informed and believes and thereon alleges that A-STAR and ID-
8 WISE, and each of them, knew or should have known that the advertisements were
9 misleading and untrue.

10 276. ARTEC has been, and is likely to be further injured as a result of A-STAR
11 and ID-WISE's, and each of their, misrepresentations either by direct diversion of
12 customers and distributors from ARTEC to A-STAR and/or ID-WISE or other
13 competitors, or by the lessening of the goodwill which ARTEC and its industry-leading
14 products enjoy in the marketplace.

15 277. ARTEC is informed and believes and on that basis alleges that A-STAR and
16 ID-WISE, and each of them, acted in bad faith by disseminating the false or misleading
17 statements set forth above.

18 278. The acts and practices alleged herein are continuing to be practiced by A-
19 STAR and ID-WISE, and each of them, and will cause great and irreparable harm to
20 ARTEC and the public at large unless and until restrained by order of this Court.

21 279. ARTEC has suffered and will imminently suffer further harm, including loss
22 of proprietary information and competitive position, the amount of which will be difficult
23 to ascertain.

24 280. ARTEC will be without adequate remedy at law and is therefore entitled to
25 an injunction restraining A-STAR and ID-WISE, and each of them, as well as their
26 officers, agents, employees, and all persons acting in concert with them from publishing
27 unfair, deceptive, untrue or misleading advertising as alleged in this Complaint.

28

281. As a direct result of the misleading and untrue public statements and advertising alleged herein, A-STAR and ID-WISE, and each of them, have been unjustly enriched in an amount not yet ascertained. ARTEC is entitled to an accounting and restitution from A-STAR and ID-WISE, and each of them, in an amount to be determined at trial.

COUNT SIXTEEN

Unfair Competition (Business & Professions Code §§ 17200, et seq.)

(Against All DEFENDANTS)

282. ARTEC re-alleges and incorporates by reference the allegations in paragraphs 1 through 281 above as if fully set forth herein.

283. ARTEC is informed and believes, and on that basis alleges, that the wrongful conduct of Defendants, and each of them, including but not limited to the tortious interference with the Employment Agreements and NCIAs of ARTEC employees; the misappropriation of ARTEC's Trade Secrets and Confidential Information, vendor and distributor information, and customer information; and the unauthorized manufacture and sale of devices or products identical or substantially similar to ARTEC Devices, *inter alia*, as alleged and set forth herein constitutes statutory unfair competition under California Business and Professions Code §17200 et seq.

284. These acts and practices, as described in the preceding paragraphs, are unlawful and unfair and in violation of Section 17200.

285. ARTEC is informed and believes, and on that basis alleges, that DEFENDANTS, and each of them, threaten and propose to perform further acts of unfair competition and that, unless and until restrained by appropriate injunctive relief, ARTEC will continue to suffer irreparable harm for which there is no adequate remedy at law.

286. As a direct and proximate cause of DEFENDANTS', and each of their, unfair competition, DEFENDANTS have been unjustly enriched at ARTEC's expense in an amount not yet ascertained. ARTEC is entitled to an accounting and restitution from DEFENDANTS in an amount to be determined at trial.

COUNT SEVENTEEN

Violation of Cal. Penal Code § 502

(Against KLIMOV)

287. ARTEC re-alleges and incorporates by reference the allegations in paragraphs 1 through 286 above as if fully set forth herein.

288. In or about October 2014, at KLIMOV's urging without ARTEC's authorization, Parkhalin wrongfully utilized ARTEC's computer systems to transfer computer files and data to KLIMOV.

289. In addition, from October through February 2014, KLIMOV himself accessed ARTEC's computer system to transfer computer files and data, including from ARTEC's secured Redmine files.

290. Through these actions, KLIMOV sought to extract confidential and proprietary information from ARTEC and its computer networks for the purpose of competing against ARTEC in the field of 3D technology.

291. By so doing, KLIMOV did:

a. Knowingly access and without permission use ARTEC's data, computer, computer system, and computer network in order to wrongfully obtain ARTEC's property and files.

b. Knowingly access and without permission take, copy, and/or make use of data from ARTEC's computer, computer system, and computer network.

c. Knowingly and without permission access and cause to be accessed ARTEC's computer, computer system, and computer network.

292. These actions by KLIMOV caused damage to PLAINTIFF.

293. KLIMOV is thus liable pursuant to Cal. Pen. Code § 502(e) for such damages sustained by PLAINTIFF as a result of his unlawful activities identified in this cause of action.

V. PRAYER FOR RELIEF

WHEREFORE, ARTEC prays for relief as follows:

1 1. That DEFENDANTS, and each of them, and their directors and officers,
2 agents, servants, employees, attorneys, affiliates, distributors, consultants and any other
3 persons in active concert or participation with them be preliminarily, and permanently
4 enjoined from the wrongful acts and conduct set forth above.

5 2. That DEFENDANTS, and each of them, and their directors and officers,
6 agents, servants, employees, attorneys, affiliates, distributors, consultants and any other
7 persons in active concert or participation with them be preliminarily, and permanently
8 enjoined from:

9 a. making any unauthorized use of ARTEC Trade Secrets and
10 Confidential Information;

11 b. developing, manufacturing, selling or advertising for sale any
12 hardware or software product that competes in the industry of 3D scanning and facial
13 recognition technology, or which competes against ARTEC products including the Artec
14 Broadway 3D line of products, Artec Studio 10, Artec Scanning SDK, Artec Shapify
15 Booth, Artec Eva, and Artec Spider and Space Spider;

16 c. accessing, using, copying, publishing, disclosing, attempting to use or
17 disclose, transferring, selling or otherwise distributing, directly or indirectly any of
18 ARTEC's trade secrets, related information, confidential or proprietary business
19 information, and/or any product or service developed with the use of, with reference to,
20 derived from, or incorporating all or any part of ARTEC's Trade Secret and/or
21 Confidential and Information; engaging in false, misleading and deceptive promotional
22 activities that can or are likely to mislead members of the public as to the origin of
23 products or services; encouraging or facilitating ARTEC's distributors to violate their
24 agreements and continuing covenants with ARTEC; and using data or other information
25 obtained from ARTEC by improper means; and

26 d. Hiding or destroying any documents or other evidence in any way
27 concerning the allegations in this Complaint.
28

1 3. That DEFENDANTS, and each of them, be directed to file with the Court
2 and serve upon counsel for ARTEC, within thirty days after entry of judgment, a report in
3 writing under oath setting forth in detail the manner and form in which DEFENDANTS
4 have complied with the requirements of the injunction.

5 4. A preliminary and permanent injunction ordering DEFENDANTS, and each
6 of them, their directors and officers, agents, servants, employees, affiliates, distributors,
7 consultants and any other persons in active concert or participation with them, to:

8 a. assign all rights, title and interest in any material developed in
9 reliance on Confidential Information or Trade Secrets to ARTEC;

10 b. deliver and/or destroy any marketing material, advertisements, or
11 other items that are untrue or misleading under Business & Professions Code § 17500;

12 c. submit to forensic analysis any and all computer systems and
13 electronic storage devices, including personal computers, personal email accounts, Skype
14 accounts, Hangout sessions, handheld devices and/or USB or other drives, to determine the
15 extent to which they possess or have possessed any of ARTEC's Confidential Information
16 in any form; and

17 d. return to ARTEC any property or information belonging to ARTEC;
18 and destroy any and all copies of such information in their possession.

19 5. That DEFENDANTS be directed to file with the Court and serve upon
20 counsel for ARTEC, within thirty days after entry of judgment, a report in writing and
21 under oath setting forth in detail an accounting of any and all sales, revenues, profit
22 sharing or kick back payments DEFENDANTS made, obtained or distributed as a result of
23 their actions in violation of ARTEC's rights described herein.

24 6. That DEFENDANTS be ordered to deliver to ARTEC possession of:

25 a. all ARTEC documents, computer files, designs, or other tangible
26 ARTEC things, including but not limited to, those things which refer to, reflect, constitute,
27 or in any way embody any of ARTEC's Trade Secrets and/or Confidential Information;
28 and

1 b. any and all things created, incorporating, referencing, based upon, or
2 derived from ARTEC's Trade Secrets and/or Confidential Information.

3 7. That ARTEC receive such other injunctive relief as ARTEC may request and
4 the Court may deem just and proper.

5 8. That DEFENDANTS show cause, if they have any, why they should not be
6 enjoined as set forth hereinabove during the pendency of this action.

7 9. For disgorgement of any money, property, or the value of any other
8 economic benefit that Defendants, or any of them, have received as a result of their
9 unlawful conduct.

10 10. That DEFENDANTS, and each of them, be required to account for all gains,
11 profits, and advantages derived from their acts of misappropriation and other violations of
12 law.

13 11. That all gains, profits, and advantages derived from their acts of
14 misappropriation and other violations of law be deemed to be in constructive trust for the
15 benefit of ARTEC.

16 12. For an order declaring that ARTEC is the sole owner of any software,
17 hardware, products, or designs, regardless of the stage of development, created by
18 DEFENDANTS, or any of them, in violation of law or contract.

19 13. For an order requiring DEFENDANTS, and each of them, to disgorge profits
20 earned from their unlawful conduct.

21 14. For an award of restitution, unjust enrichment, actual damages, liquidated
22 damages, statutory damages, and compensatory damages according to proof at trial.

23 15. As for KLIMOV and KLIMOVA, disgorgement of their salary and any
24 additional compensation during the period in which they were in breach of their fiduciary
25 duties, which on information and belief started in August 2014 at the latest; invalidation of
26 the transfer or sale of KLIMOV's shares of ARTEC stock to any third party; disgorgement
27 of KLIMOV's shares of ARTEC stock; compensatory damages in an amount to be decided
28 at trial; and punitive damages.

1 16. For attachment of KLIMOV's outstanding shares of stock to the extent that
2 the value of such shares offsets the damages incurred by ARTEC.

3 17. For aggravated damages.

4 18. For punitive or exemplary damages.

5 19. For interest as allowed by law.

6 20. For costs of suit, including reasonable attorneys' fees, to the full extent
7 permitted under law or contract.

8 21. For such other relief as the Court deems just and proper.

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VI. DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), ARTEC hereby demands a jury trial for all issues in this case that properly are subject to a jury trial.

Dated: January 15, 2016 Respectfully submitted,

By: /s/ Benjamin Davidson

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An Nguyen Ruda

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